

**THE REPUBLIC OF UGANDA**

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

**MISCELLANEAOUS APPLICATION NO. 197 OF 2022**

**ARISING FROM LABOUR DISPUTE REFERENCE NO. 284 OF 2019**

 *(All arising from KCCA/RUB/LC/023/2019)*

**OJIAMBO PATRICK::::::::::::::::::::::::::::::::::::::::::::::::::::::CLAIMANT**

**VERSUS**

**CENTENARY RURAL DEVELOPMENT BANK LTD::::::::RESPONDENT**

**BEFORE:**

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

**PANELISTS:**

1. Ms. ADRINE NAMARA,

2. Ms. SUSAN NABIRYE &

3. Mr. MICHAEL MATOVU.

 **RULING**

**Introduction**

[1]Mr. Patrick Ojambo (*from now the* **Applicant**) sought this Court’s determination on a notice of motion for an interim injunction order restraining the Respondent from selling, auctioning or otherwise dealing with land comprised in PLOT 26, BLOCK RWIZI ROAD FOLIO 9 VOL. MBR 74 LAND AT LUGAZI-KAKOBA MBARARA until the hearing and final disposal of Labour Dispute Reference No. 284 of 2019 (*from now the* ***reference***). He brought the application under Section 33 of the Judicature Act Cap.13 (*from now* ***JA***), Sections 98 of the Civil Procedure Act Cap. 71(*from now* ***CPA***) and Order 52 Rules 1 & 3 of the Civil Procedure Rules S.I 71-1(*from now* ***CPR***).

[2] The grounds of the application, as listed in the motion and contained in the Applicants affidavit in support can be summarized as follows:

1. The Applicant filed the reference against the Respondent for unfair and illegal termination of his employment contract which is pending before this Court,
2. At the time of his termination, he had secured a salary loan of UGX 224,000,000/= from the Respondent and one of the issues for determination by Court was whether he was liable to pay this loan.
3. He has paid UGX 282,370,894/= and the outstanding balance is UGX 75,000,000/= in interest. The continuous demands for payment are unjust, malicious and are causing inconvenience and psychological torture.
4. If the property is sold, he will suffer irreparable injury and the main suit will be rendered nugatory and;
5. He has a prima facie case, the Respondent would suffer no prejudice if the order sought is granted and it is just, equitable and in the interest of justice that the order is granted.

[3] The Respondent opposed the application. In the affidavit in reply, Mr. Robert Sekidde, the Respondent’s Legal Manager for Litigation objected to the propriety of the application (*seeking an untenable order and related to a mortgage deed*) which issues were not triable by this Court. He deposed that the Respondent had capacity to atone any injury in damages in the event of adverse orders in the reference and that the Respondent was exercising its rights under the mortgage. That the Court could only postpone the sale upon deposit of 30% of the forced sale value of the property.

[4] The Court is grateful to Counsel for the succinct written submissions.

 **Preliminary Points**

[5] The Respondent raised two preliminary points of law;

[5.1]Firstly, citing the case of **Mooli Grace v Paul Mooli & Anor Civil Revision No 009 of 2012** and Order 50 r 3A(3) CPR for the propositions that an application for an unlimited interim order is not tenable and that an interim order may only be granted where there is a pending substantive application; and,

[5.2]Referring to Regulation 13(1) of the Mortgage Regulations 2012 and the cases of **Ganafa Peter Kisawuzi v DFCU Bank Ltd[[1]](#footnote-1)** and **Nakato Margaret v Housing Finance Bank Ltd & Anor[[2]](#footnote-2)** for the proposition that the deposit of 30% of the forced sale value of the property is mandatory before a Court considers an application for injunctive relief on mortgaged property.

 **Resolution of preliminary points**

[6] We did not benefit from the Applicant’s rejoinder on the preliminary points. Counsel for the Applicant premised the application on Section 33JA, Sections 98CPA and Order 52 Rules 1 & 3 CPR. In our view, the substantive law applicable to applications for interim injunctive relief now falls under Order 50 Rule 3A(3) of the Civil Procedure(Amendment) Rules, 2019 which provides as follows:

‘3A. Application for ex parte interim order…..

(3) The Court shall only consider the hearing of an application for interim relief where there is a pending substantive application with a likelihood of success……..

(5) Subject to subrule (2), an ex parte interim order shall be granted only in exceptional circumstances and for a period not exceeding three days from the date of issue and upon hearing of the substantive application, the order shall lapse…….

(underlining and ellipsis supplied)

[7] The above provision is couched in mandatory terms. The law, as it stands, does not envisage interim relief in the absence of a pending substantive application. Neither the motion papers nor the Court record bears reference to any such pending substantive application, with a likelihood of success. It follows that this Court cannot countenance an application without a necessary foundation. The order on the face of the motion, reads as follows:

**‘An interim injunction order be granted restraining the Respondent, her agents, servants, employees and/or persons claiming from the respondent, from selling, auctioning, alienating or interfering with the land comprised in PLOT 26 BLOCK RWIZI ROAD FOLIO 9 VOL. MBR 74 LAND AT LUGAZI-KAKOBA MBARARA until the hearing and final disposal of Labour Dispute Reference No. 284 of 2019 pending before this Honourable Court’**

The wording of the order sought is clearly for an unlimited **interim** order. As noted above, there is no provision under the law to entertain an application for interim relief absent of a pending substantive application. The Applicant did not direct us to such substantive application or attach proof of its existence in the affidavit in support. We have also perused the record and find no record of a substantive application from which the present application arises. The finer point in this Court’s view, is that the nature of relief sought is not, by any means, interim. It is pending the hearing and disposal of the reference. The reference itself, was filed on the 10th of October 2019, nearly 2 and a half years ago. In the case of **Alcon International Ltd vs The New Vision Printing and Publishing Co Ltd and Another**[[3]](#footnote-3) the Supreme Court of Uganda held that a Court hearing an application for interim relief, must be satisfied that there is a pending substantive application. A similar view was expressed in the case of **Hwang Sung Industries Ltd v Tajdin Hussein.**[[4]](#footnote-4) Considering the facts in the present application, the law and authorities cited and the submissions of the parties, it is our determination, therefore, that the present application would fail on this ground.

[8] It was also submitted that if this Court were to consider the application, the subject of mortgage would be governed under the Mortgage Act 2009 and the Regulations made thereunder. In that regard, Regulation 13 of the Mortgage Regulations, 2012 requiring the Applicant to deposit 30% of the forced sale value of the property before adjournment or stay of the sale, would be applicable. The passage cited by the Respondent from the case of **Nakato Margaret v Housing Finance Bank Ltd & Anor High Court Civil Appeal No. 687 of 2021** is instructive as it now embeds a principal consideration in applications for interim injunctive relief. The Honourable Mr. Justice Stephen Mubiru observed thus;

*‘The position now is that applications for temporary injunctions involving mortgaged property have to be dealt with in conformity with the statutory provisions for mortgages under the Mortgage Act, 2009. The statutory requirements under the Mortgage Regulations thereby override traditional considerations for the grant of a temporary injunction.’*

Similarly, in the case of **Mutumba Zaitun v Crane Bank Ltd** (In receivership), the Honourable Mr. Justice Henry I. Kawesa applied the interpretation of Regulation 13(1) by the Court of Appeal in the Ganafa case, to this effect:

*‘Grant of an order of injunction is not available to an Applicant who is in breach of Regulation 13(1) of the Mortgage Regulations.’*

[9] The authorities on the point make it clear. The law as it now stands is for an application of this nature to suceed, the applicant must pay 30% of the forced sale value of the mortgaged property before seeking the remedy of injunctive relief. To his affidavit in support of the application, the Applicant attached a copy of the Banking Facility Agreement indicating that the property which is the subject matter of this application had been mortgaged to the Respondent. On this basis, we would hold that Regulation 13(1) is applicable.

[10] According to the dictum expressed by the Hon. Justice Mubiru in the Nakato Margaret case(supra) it appears that the only exception to the requirement to deposit 30% of the forced sale value, would be when an application for injunctive relief is brought by a spouse under Regulation 13(6) of the Mortgage Regulations. The Court would take into account several spousal and familial considerations.

[11] In the matter before us, the Applicant has alluded to the property subject of the application being a matrimonial and family home. However, the present application is not brought by the spouse of the borrower to afford consideration under Regulation 13(6) of the Mortgage Regulations. The Applicant has not demonstrated compliance with Regulation 13(1) of the Mortgage Regulations 2012, to afford him the opportunity to seek interim injunctive relief. Accordingly, the preliminary points of law in respect of the lack of a substantive application and non-compliance with Regulation 13(1) of the Mortgage Regulations would be upheld and the present application would be dismissed with no order as to costs. There would be no order as to costs in keeping with the dictum expressed by this Court in the case of **Joseph Kalule v GIZ**[[5]](#footnote-5) where the Court observed that the grant of costs in employment disputes is the exception rather than the rule. Barring any misconduct on the part of the unsuccessful party, the successful party would not be entitled to costs. This would be all there is to this matter. But, for completeness, we shall consider the substance of the application.

 **Analysis and Decision on the merits**

[12]The crisp issue for determination, as framed by Counsel for the Respondent, is **whether the Applicant satisfies the grounds for the grant of this application?**

**Submissions of the Applicant on the merits of the application**

[13]Mr. Araali Mandela, appearing for the Applicant submitted set out the grounds for a grant of injunctive relief [[6]](#footnote-6) being that the Applicant must show a prima facie case with a probability of success, the threat of irreparable injury not compensable in damages and if the Court is in doubt then on the balance of probabilities. It respect of a prima facie case, it was submitted that the test is whether there is a serious issue to be tried.[[7]](#footnote-7) The questions of law where that of unfair and illegal termination and liability for the loan. In respect of irreparable injury, it was submitted that Applicant had paid UGX 282,370,894 out of the borrowed amount. A balance of UGX 75,000,000 was outstanding. The sale of a family home would cause irreparable injury. And it was submitted that the balance of convenience was tiled in favour of the Applicant, having paid 120% of the loan. The Respondent would not be prejudiced if it awaited a final determination of liability for the loan. As to status quo, it was submitted that if the property were sold, the issue of liability for the loan would be determined and the remedies sought in the main cause, defeated.

[14] In his final address to the Court, Mr. Mandela submitted under Sections 98CPA and 33JA, this Court is equated to the High Court and can grant the remedies sought to avoid a multiplicity of suits. He submitted that if this Court had jurisdiction to determine liability for the loan, then it could stay proceedings arising from the loan. It was the Applicant’s case that he had exhausted all sources of income to pay the loan.

**Submissions of the Respondent**

[15] Mr. James Zeere, appearing for the Respondent, submitted that there was no prima facie case. The reference relates to the Applicant’s termination and not the validity of the mortgage. In respect of irreparable loss, it was submitted that the Applicant had not shown how he would suffer loss and irreparable damage. Counsel cited several cases in support of this proposition.[[8]](#footnote-8) He also submitted that the Respondent was in a position to pay damages if the Court were to find for the Applicant in the reference. On the balance of convenience, it was submitted that the Court ought not to be in doubt as the Applicant had neither established a prima facie case nor shown how he would suffer irreparable damage. It was the Respondents case that the Applicant was truly indebted to it and that the balance of convenience favoured the Respondent that had lent out depositors money, now at stake. Counsel cited the case of **Herbert Kabunga Traders v Stanbic Bank (U) Ltd**[[9]](#footnote-9) in support of his assertion.

[16] Citing three decisions of the High Court[[10]](#footnote-10), Mr. Zeere contended that the status quo to be preserved was that the process of sale had commenced and any preservation order would have the effect of maintaining the process of sale. A stoppage of the sale would be altering the current status quo. Counsel asked that this Court dismisses the application.

**Status Quo**

[17] It is generally accepted that the purpose of injunctive relief is to preserve the status quo pending the final determination of the dispute.[[11]](#footnote-11) The Applicant contended that the Respondent had commenced the process of sale of his family and residential house before determination of liability of the loan. The Respondent agreed that the process of sale had commenced and any stoppage of the sale would alter the status quo. We do not think the Respondent’s proposition to be entirely accurate. The provisions of Regulation 13 of the Mortgage Regulations envisage altering of the status quo even after the process of sale has commenced. The heading of Regulation 13 is ‘Adjournment and Stoppage of Sale’. Regulation 13 provides for stoppage of a sale albeit conditionally. Under Regulation 13 (1), the Court may for reasonable cause and upon payment of 30% of the forced sale value of the mortgaged property, adjourn sale thereof. It is therefore within the ambit of the law to stop the process of sale after it has commenced. In any event, this is the purpose and intent of injunctive relief, to arrest a process pending determination of the questions in controversy. In the result, if this application had been properly before this Court, the Court would have been of the considered view that it may halt a process of sale upon fulfilment of the conditions provided by law. Indeed in the Mutumba case, cited by the Respondent, the Court stopped a process of sale.

 **Prima facie case**

[18] To establish a prima facie case, an applicant is required to demonstrate that there are serious questions to be tried in the suit.[[12]](#footnote-12) In the matter before us, it is common to the parties that the first question for determination is whether the Claimant’s contract was illegally and wrongfully terminated by the Respondent? This question was framed and agreed upon by Counsel in the joint scheduling memorandum filed in Court on the 18th of March 2021. The Second question framed by the parties in the same memorandum is whether the Claimant is liable to pay the loan that was advanced to him by the Respondent and if so by how much. In our view, both of these questions would be serious questions and more importantly, they would be related in the sense that a determination of the first question, affects the result of the second question. The second question also affects the property which is the subject matter of the present application. Recent precedent from the Court of Appeal in the case of **Stanbic Bank (U) Ltd v Constant R. Okou.**[[13]](#footnote-13)In that case, the Industrial Court made an award in respect of which the Appellant was made liable for the Respondent’s loan. The Court of Appeal posited that the contract on which the loan is based is a material consideration and there can be no blanket conclusion that there was an understanding that all loans are payable by salary deductions. Reversing the award, the Court of Appeal held that evidence would have to be taken on the outstanding loans to determine liability. In the case before us, evidence has not been taken in respect of both the lawfulness of the Applicant’s termination and any liability on the loan. We do not agree that the question for determination is solely the lawfulness of his termination but would include challenging liability on the mortgage. It is our determination, therefore, that there would be serious questions to be tried had the application been properly before this Court.

[19] In seeking the exercise of this Court’s inherent jurisdiction, the Respondent equated the Industrial Court to the High Court. This argument merits some comment. The Industrial Court is established under **Section 7 of the Labour Disputes (Arbitration and Settlement) Act 2006.** The functions of the Court are spelt out in **Section 8 of the Act** which permit the Court to arbitrate on labour disputes referred to it and adjudicate upon questions of law and fact arising from references to the Court by any other law. In **Constitutional Petition No. 33 of 2016 Asaph Ruhinda Ntengye & Linda Lilian Tumusiime Mugisha v Attorney General** the Constitutional Court found that the Industrial Court has concurrent jurisdiction as the High Court. It also has both appellate and referral jurisdiction established by statute. This Court’s jurisdiction is not to be considered unlimited original jurisdiction as that of the High Court as established under Article 139 of the 1995 Constitution. In our view, it is important for persons seeking relief before the Industrial Court to fully appreciate its jurisdiction.

[20] It was also suggested to us that it is common ground that the parties executed a facility agreement and the property, subject of these proceedings, was mortgaged to the Respondent bank. A review of Annexure “A” to the Applicant’s affidavit demonstrates that it is a banking facility agreement dated the 12th day of September 2018. At page 1 of the facility agreement, the loan amount is UGX 224,000,000/=. The facility type is a ‘staff loan’. At page 2 of the agreement, the interest rate is 8% p.a. payable over a period of 180 months. The security is a legal mortgage for the loan amount over the subject property and letters of standing instructions/bankers orders over the repayment schedule. The dictum expressed in a plethora of authorities by this Court, suggests that a mortgage between an employer and employee is considered a purely commercial transaction[[14]](#footnote-14) which falls under the jurisdiction of the Commercial Division of the High Court and is managed under the Mortgage Regulations 2013. In this purview, the facility agreement between the Applicant and Respondent is a mortgage deed. On the authority of the Musimenta case (supra) this would be matter for the Commercial Division of the High Court. However, the Court of Appeal has in the recent case of **Stanbic Bank v Okou Constant**[[15]](#footnote-15) observed that evidence must be taken on respect of the loan agreement. Evidence, has not been taken at this point and would require a hearing. We therefore think that it would have been premature to consider the entire mortgage without taking evidence.

 **Irreparable Injury**

[21] Irreparable injury is defined as [[16]](#footnote-16)injury which is substantial or material and cannot be adequately compensated in damages. The Applicant at paragraphs 7, 8, 9, 10 and 11 deposes that the sale of the property, the subject matter of this application, shall dispossess him of his family residence and matrimonial home. In the Mutumba case (op cit) the Court considered lost enjoyment of a family home by a spouse as in compensable by an award of damages. In the case before us, the application was not brought by a spouse. We would agree with the Respondent’s submission that the Applicant has not demonstrated irreparable loss.

**Balance of convenience**

[22] It is trite that the Court considers balance of convenience where it has not been established that there is a prima facie case or irreparable injury then the Court must determine the application on the balance of convenience. In the instant matter, we would have found a prima facie case thereby dispensing with the need to decide the matter on the balance of convenience.

 **Final Decision and Orders of the Court**

[23] Considering that we upheld the preliminary points of law, this application is dismissed with no order as to costs for the reasons spelt out in paragraph 10 above.

[24] Before taking leave of this matter, we note that circumstances may not have permitted a quick disposal of Labour Dispute Reference 284 of 2019. A quicker disposal of the main reference would aid all parties to this matter. We note that the matter is part heard and the Applicant has closed his case. The Respondent’s case is scheduled for hearing on the 03rd of May 2023. The completion of the case is to be expedited.

**It is so ordered.**

**Delivered at Kampala this \_\_\_\_\_\_ day of April 2023**

**SIGNED BY:**

**ANTHONY WABWIRE MUSANA, JUDGE Anthony Wabwire J**

**THE PANELISTS AGREE:**

1. **Ms. ADRINE NAMARA Adrine Namara**
2. **Ms. SUZAN NABIRYE Suzan Nabirye**
3. **Mr. MICHAEL MATOVU Michael Matovu**

Ruling delivered in open Court in the presence of:

1. For the Applicant: Mr. Ojiambo Patrick, Applicant
2. For the Respondent: None

Court Clerk: Mr. Samuel Mukiza.

1. Civ Application No 64 of 2016 [↑](#footnote-ref-1)
2. Civ Appeal No. 687 of 2021 [↑](#footnote-ref-2)
3. S.C.C.A No. 04 of 2010 [↑](#footnote-ref-3)
4. S.C.C.A No. 19 of 2008 [↑](#footnote-ref-4)
5. LDR 902/2020 [↑](#footnote-ref-5)
6. Counsel relied on the decision in the case of ELT KIYIMBA KAGGWA v ADBUL NASSER KATENDE[1985}

 HCB 43 [↑](#footnote-ref-6)
7. Counsel cited American Cynnamide v Ethicon ;1975] 1 ALL ER 504 [↑](#footnote-ref-7)
8. Vision Empire Ltd v Uganda Communications Commission H.C.M.A 1141/2020, E. Kabugo Nanyunja v Kana

 Nakayima Nsubuga H.C.M.A No.

 536 of 2002 and Settaba Fulugensio v Kizito Musoke & Anor Civil Appeal No. 452 of 2021 [↑](#footnote-ref-8)
9. H.C.M.A 159 of 2012 [↑](#footnote-ref-9)
10. Counsel cited Mutumba Zaituni v Crane Bank Ltd & 2 Ors H.C.M.A 1536 of 2017, Commodity Trading

 Industries v Uganda Maize Industries & Anor[2001-2005]HCB 118 and Sekitoleko v Mutabaazi & Ors92001-

 20050HCB 79 [↑](#footnote-ref-10)
11. Kiyimba Kaggwa v Katende(Supra) [↑](#footnote-ref-11)
12. Per Wambuzi C.J in Robert Kavuma v Hotel International Ltd S.C.C.A No. 8 of 1990 [↑](#footnote-ref-12)
13. Per Madrama JJA(as he then was) in C.A.C.A No. 60 of 2020 [↑](#footnote-ref-13)
14. See Mugisha Musimenta Rogers v Equity Bank Ltd M.A 167 of 2018 and Francis X. Kayumba v Equity Bank Ltd

 M.A 32/2017 cited by the Respondent. [↑](#footnote-ref-14)
15. C.A.C.A No. 60 of 2020 [↑](#footnote-ref-15)
16. Mutumba v Crane Bank(supra) pages 7 [↑](#footnote-ref-16)