



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 151 OF 2023

(Arising From Miscellaneous Application No. 150 Of 2023, Labour Dispute Reference No. 115 Of 2022 And Labour Dispute Claim No. 145 Of 2021 and KCCA/CEN/LC/059/2017)

SANYU DICKSONAPPLICANT

VERSUS

POST BANK UGANDA BANK LTD.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. *Mr. Rogers Ntale holding brief for Mr. Albert C. Kyeyune of M/S Mukiibi and Kyeyune Advocates for the Claimant.*
2. *Mr. Conrad Mutungi holding brief for Mr. Ricky Mudeli of M/S Orima & Co Advocates for the Respondent.*

RULING

Introduction

- [1] By notice of motion, the Applicant sought an interim order of injunction restraining the Respondent from selling his property comprised in LRV 3214 FOLIO 13 at Sheikh Ahmada Road, Plot 1 Masaka Municipality, until the final disposal of Labour Dispute M.A. No. 150 of 2023. He brought the application under Sections 64(e) and 98 of the Civil Procedure Act Cap. 71(from now CPA) and Order 52 Rules 1 & 2 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:

- (i) The Applicant was employed as the Respondent's Business Growth Manager until he was terminated without warning for poor performance.
 - (ii) Before his termination, he had a salary loan illegally recalled after termination.
 - (iii) The Applicant has a reference pending before this Court.
 - (iv) The Respondent had advertised the Applicant's property for sale.
 - (v) The Applicant had filed a meritorious application for a temporary injunction and;
 - (vi) It was fair and just for the interim order to issue.
- [3] The Respondent opposed the application. Mr. Paul Keishaari, the Respondent's Legal Officer, was deposed to the failure of the application to meet the threshold for grant of interim relief, the Applicant's loan and termination for poor performance, the default, and the notice of sale. Mr. Keishaari was also deposed to the Applicant's institution of High Court Civil Suit No. 923 of 2022 at the Commercial Division, from which a temporary injunction in High Court Miscellaneous Application No. 1480 of 2022 was granted. It was deposed that the Applicant did not comply with the order in Miscellaneous Application No. 1480 of 2022 to deposit 30% of the outstanding loan sum. Mr. Keishaari was also deposed to the loan not being a salary loan but a real estate loan. He averred that the Respondent was exercising its rights under the mortgage.
- [4] On the 24th of November 2023, we invited the parties to file their written submission on the preliminary points of law and the application's merits. The Respondent complied with this direction. At the rendering of this ruling, there is no record of the Applicant filing any written arguments. We propose to dispose of the matter beginning with the preliminary points of law.

Preliminary Points

- [5] The Respondent raised two preliminary points of law, the first of which was that the orders sought to be granted had already been granted by the Commercial Division of the High Court, and thus, the matters were res judicata. Counsel for the Respondent cited the cases of **Maniraguha Gashumba v Sam Nkundiye C.A No. 23 of 2005** and **Karia and Another v Attorney General and Others [2005] 1 EA 83** in support of the proposition that the present matter was res judicata.

Determination

- [6] Under Section 7 CPA, it is provided that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court. In addition to this provision, the CPA contains six explanations of the expression in the former suit, the competence of the court, the presence of an allegation of a matter and an express or implied denial or admission by the other party, the existence of any ground of defence or attack in the former suit, the relief claimed not granted or deemed to have been refused and the litigation in the public interest by some persons in the interest of others.

- [7] The Black's Law Dictionary¹ ascribes a decidedly straightforward meaning to res judicata. It defines res judicata as a thing adjudicated, an issue that has been definitively settled by judicial decision and lists the three essential ingredients of res judicata as (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties. In effect, the invocation of res judicata envisages a trial of an issue between the same parties preceding a judgment on the issue. In a recent decision on the point in **Bukenya Ronald T/A GL washing Bay v Kampala Capital City Authority and Anor**² the Honourable Lady Justice Esther Nambayo was determining whether a claim for special damages had been addressed in an earlier suit. Her Lordship observed that the claim for special damages was abandoned and not addressed by the Court in the earlier judgment. Given that the Plaintiff, in that case, had abandoned the prayer for special damages and the Court did not address it, coupled with the fact that the 1st Defendant was not a party to the earlier case, the latter suit was not in Her Lordship's view, res judicata.
- [8] Therefore, the tests for res judicata are threefold: an earlier decision on the matter, a final judgment on the merits and the involvement of the same parties. The present question, therefore, is whether the application before the Registrar of the Commercial Division in Miscellaneous Application No. 1480 of 2022 is res judicata.
- [9] Under Section 2(x) CPA, "suit" means all civil proceedings commenced in any manner prescribed. This application was commenced by motion under Order 52 CPR. The Learned Author's M. Ssekaana J. and SN Ssekaana suggest, citing **Anorero River Form Limited and others V National Bank of Kenya Ltd**,³ that interlocutory applications in a suit cannot be regarded as suits for Section 7 CPA. They note, though, that the doctrine of res judicata applies to both suits and applications, whether final or interlocutory.
- [10] Conversely to the notation derived from the Learned Authors, in **Souna Cosmetics Ltd v The Commissioner Customs URA & Anor**⁴ Madrama J(*as he then was*) held that an application for an interim injunction is not an application on the merits but is meant to preserve the right to appeal or the right of hearing on the merits which right may be curtailed if the status quo is changed. The law concerning the interim injunction is that the court preserves the right of the applicant/appellant to be heard on the merits, which is a very limited jurisdiction which does not deal with the merits of the suit. The purpose of the interim measure is to preserve the right to be heard on the appeal or application. Further jurisprudence entrenches the view that the purpose of the interim injunctive orders is to preserve the status quo⁵. This means there can be several applications for interim orders if there are changes to the status quo. Such applications include the extension or variation of interim orders or, indeed, vacating of an interim order. Demonstrably, under Order 50 CPR (*As Amended*), ex-parte interim orders lapse within three days from the issue date and upon hearing of the substantive application.

¹ 11th Edn by Bryan Garner at page 1567

² H.C.C.S No. 156 of 2018

³ H.C.C.S No. 699 of 2001 cited in M.Ssekaana and SN Ssekaana Civil Practice and Procedure in Uganda page 139.

⁴ H.C.M.A No. 267 of 2011

⁵

Under Order 50(4), the interim order lapses if proof of service is not presented within the period stipulated in subrule (6). An Applicant would have leeway to file and refile applications for interim relief. There can, therefore, be varied intervening factors affecting interim injunctive relief, which suggest that the grant or non-grant of an interim order is not a final disposition of the dispute to have both a claim and issue preclusion for the plea of *res judicata* to stand.

[11] Therefore, given that the application for interim orders does not relate to a final determination of a dispute or is not a final judgment on the merits, we cannot sustain the Respondent's objection on *res-judicata*, which is accordingly overruled.

[12] However, the facts before us invite us to consider the *lis pendens* rule. Section 6 CPA reads as follows:

"6. Stay of suit.

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed. Explanation — The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in that suit in the foreign court."

[13] The principles of the *lis pendens* rule were highlighted in the High Court's decision in **Springs International Hotel Ltd v Hotel Diplomat Ltd and Anor**⁶ where His Lordship the Honourable Dr. Justice Andrew Bashaija contextualizes Section 6 CPA which encapsulates the principles that underpin the rule, to mean that no court ought to proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previous instituted suit or proceeding; and or the previously instituted suit or proceedings is between the same parties; and or the suit or proceeding is pending in the same or any other court having jurisdiction to grant the reliefs claimed.

[14] From the dicta of the High Court, there are three tests:

- (i) whether the matter(s) in issue in the instant suit are directly and substantially in issue in a previously instituted suit and
- (ii) whether the suit is between the same parties
- (iii) whether the suit is pending in the same or any other court having jurisdiction to grant the reliefs claimed

In its pleadings, the Respondent attached a certified copy of a ruling by Her Worship Juliet Nakitende Ag to its affidavit in reply. Assistant Registrar in **Miscellaneous Application No.**

⁶ H.C.S 227 of 2011

1480 of 2022 between Sanyu Dickson and Post Bank (U) Ltd. The application was noted to arise from Civil Suit No. 0923 of 2022. Her Worship Nakitende's ruling listed the orders sought as:

"(1) A temporary injunction doth issue restraining the Respondent/Defendant, its agents and or any other person authorized by it from transferring, selling, disposing of and or alienating the property or evicting the applicant/plaintiff from land comprised in LRV 3124 plot 1 folio 13 land at Sheik Ahamada Road, Masaka Municipality, Masaka District, until determination and final disposal of the main suit."

No rebuttals to the affidavit in reply were made.

[15] In the present application, the parties are the same, and the relief claimed was

"an interim injunction order restraining the Respondent from selling his property comprised in LRV 3214 FOLIO 13 at Sheikh Ahmada Road, Plot 1 Masaka Municipality until final disposal of Labour Dispute Reference No. 150 of 2023."

[16] In her determination of the application, Her Worship Nakitende found that it was undisputed that the property comprised in LRV 3214 FOLIO 13 at Sheikh Ahmada Road, Plot 1 Masaka Municipality, was what was sought to be injuncted.

[17] The parties, subject matter by description of the property, and the relief claimed in HCMA 1480 of 2022 and the present application are substantially the same. The Assistant Registrar granted the application directing the Applicant to deposit 30% of the mortgage sum within 45 days from the 16th day of January 2023. The order was to subsist for 24 months therefrom or until further orders of the Commercial Court. As it now transpires, the Applicant has sought a similar order before this Court, and in our view, the matter falls squarely within the prohibitions of the lis pendens rule. It is between the same parties, concerns the same property and seeks the same relief. The relief sought was granted albeit under Regulation 13(1) of the Mortgage Regulations 2012, which regulations this Court has found applicable in similar applications brought before it.⁷ In the circumstances and on the authorities cited above, the Applicant would be prohibited from pursuing this application. This Court has a bounden duty not to try a matter directly and substantially in issue before the other Court.

[18] This application is accordingly dismissed.

[19] The Respondent asked for costs of the application. We have expressed the view that costs are awardable in employment disputes where a party is guilty of some form of misconduct.⁸ In the present matter, the Applicant applied for and was granted interim injunctive relief by the Commercial Division of the High Court. The Applicant did not comply with the order. By filing a similar application before this Court, the Applicant has

⁷ See LDMA 197 of 2022 Ojiambo Patrick v Centenary Bank Uganda Ltd

⁸ Joseph Kalule v GIZ LDR 902/2020

unduly engaged both the Respondent and the Court. This makes for a proper case for a grant of costs to the Respondent. Indeed, in the Springs case (*supra*), Bashaija J. found filing a multiplicity of suits in court potentially to be an abuse of Court process. Accordingly, and for this reason, the Respondent shall have the costs of the application.

[20] As the resolution of a preliminary point disposes of the application, we do not think it necessary to consider its merits.

Signed in Chambers at Kampala this 2nd day of February 2024

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

Namara
Nabirye
Matovu

Date: 2nd February 2024

Time: 1.24 p.m.

Appearances

1. For the Applicant: Absent.
2. For the Respondent: Mr. Ricky Mudeli.

Court Clerk: Mr. Samuel Mukiza.

Mr. Ricky Mudeli : Matter is for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court