

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

MISCELLANEOUS APPLICATION NO.652 OF 2020

(ARISING FROM MISCELLANEOUS APPLICATION NO. 651 OF 2020)

(ARISING FROM MISCELLANEOUS CAUSE NO. 299 OF 2020)

TWED PROPERTY DEVELOPMENT LIMITED----- APPLICANT

VERSUS

1. UGANDA INVESTMENT AUTHORITY

2. VICTORIA NILE PLASTICS LIMITED ----- RESPONDENTS

3. JEFFRFA LIMITED

BEFORE HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of Notice of Motion against the respondent under Section 33 of the Judicature Act cap 13 and Section 98 of the Civil Procedure Act, and Order 52 r 1, & 3 of the Civil Procedure Rules, for orders that;

- a) An interim order doth issue prohibiting the 1st respondent from issuing an initial lease or, in the alternative, full term leases to the 2nd and 3rd respondent till disposal of the substantive application for a temporary injunction.
- b) A further interim order be issued prohibiting the 1st and 2nd Respondent from carrying on developments on the land comprised in Kyaggwe Block 113 Plot 572 till disposal of the substantive application before the judge for a temporary injunction to prohibit the said developments.

c) Costs of the application be provided for.

The grounds in support of this application are set out in the affidavit of Dr. Dan Twebaze dated 7th October 2020 which briefly states;

1. That the applicant has a pending application for judicial review against the respondents and also applied for a temporary injunction against the same over the revocation of its interests in the land comprised in Kyaggwe Block 113 Plot 572 and granting right over it by the 1st respondent to the 2nd and 3rd respondents in a manner that was irregular and unfair.
2. The applicant stands to lose considerable sums in developments already carried out if the respondents are not prohibited from carrying on different developments on the land to the prejudice of the applicant as they have limited financial capacity to indemnify it.
3. That in a communication issued on 12th September 2011, the 1st applicant approved the applicant's proposal for the construction of residential, office developments and a 4 star hotel in Namanve Industrial park and allocated it 5 acres of land comprised in Kyaggwe Block 113 Plot 572 for the said developments.
4. That at the time the land was allocated to the applicant, part of the land was occupied by squatters and the applicant embarked on a process of negotiating and compensating them to vacate the land and pave way for surveying and enabling civil works.
5. That the applicant commenced survey of the said land after spending over 15 months settling encroachers on the allocated land and duly informed the 1st respondent on 7th October 2013 about the completion of the survey and requested for permission to fence the and the this permission was granted.

6. On the 28th April 2014, the applicant, upon completion of the initial feasibility studies and after ascertaining the exact location of the land for the development of residential works, office units and 4 star hotel, reached the conclusion that the adjacent construction of a factory by Roofings Group Limited had rendered the particular project plan untenable. Consequently, the applicant applied for the change of user from the original proposal to a modern warehouse and logistics centre in order to match the character of adjacent developments as well as economic viability.

In opposition to this Application the Respondent through Hamza Galiwango a Director, Industrial Parks in the Uganda Investment Authority filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. That the execution of the lease , the applicant had not done the following;
 - a) Grading and fencing off the land.
 - b) Submitting acceptable building/architectural plans to UIA
 - c) Obtaining NEMA approvals to commence project implementation.
 - d) Erecting any physical development on the land.
2. That Uganda Investment Authority decided not to renew its lease to the Applicant on account of failure to comply with the conditions of the lease agreement.
3. That the applicant does not have any intended or pending project on the suit land considering that the applicant's lease was not renewed by the Uganda Investment Authority and the land therefore reverted by operation of law to UIA.
4. That the status quo in this case is that the suit land is in the possession of the 2nd and 3rd respondents. Uganda Investment Authority allocated 3 acres of the land comprised in Plot 1638 Block 113 Kyaggwe Mukono on a 5 year

lease starting 20th July 2020. The authority also allocated 2 acres of the land to Jerryfa Limited.

5. That there is no eminent threat to the status quo and the applicant has no prima facie case as against the 1st respondent and the balance of convenience is not in favour of granting this application.

The 2nd respondent opposed the application and filed an affidavit in reply by Jiyan Alpehkumar Manubhai the Managing Director.

1. That by letter dated 5th May 2020, the 1st respondent informed the 2nd respondent that Uganda Investment Authority-Board at its sitting of 30th April 2020 had evaluated the 2nd respondent's application for land in the Kampala Industrial Business Park for construction of factory to manufacture aluminium products and decided to allocate 3 acres of fully subsidized land to the 2nd respondent.
2. The 2nd respondent accepted the offer in a letter dated 7th May 2020 and they were subsequently registered as proprietor of land comprised in Leasehold Register Volume MKO2148, Folio 16, Plot 1638, Kyaggwe Block 113, Namanve, Mukono District.
3. That the 2nd respondent has invested heavily in the land by paying for its survey, premium, ground rent, a performance bond. The 2nd respondent also cleared and is levelling the land, has erected a gate and has commenced with construction of a perimeter wall and a guard house.

In the interest of time the respective counsel were directed to file written submissions and I have considered the respective submissions. The applicant was represented by *Mr. Jude Byamukama and Mr. Phillip Mwesiga* whereas the respondent was represented *Mr. Franklin Uwizera represented the 1st respondent and Mr. Albert Byamugisha represented the 2nd respondent. The 3rd respondent was not represented and did not file any affidavit.*

The applicant's counsel submitted that, the granting of an interim injunction is an exercise of judicial discretion as was discussed in the case of Hon Anifa Bangirana vs Attorney General **Misc.Application No. 46 Of 2010**. Lady Justice Stella Arach Amoko noted that; *"An Interim injunction is a discretionary order issued by Court for a short time, and usually to a particular date pending the determination of the main application. The conditions for the grant are basically the same with the ones pertaining to applications for temporary injunction"*

Her Lordship pointed out that the considerations as being that; Court has jurisdiction to grant or not to grant the order, the suit raises triable issues and that failure to grant the application would render the disputed matter nugatory in manner that cannot be redressed through an award of damages hence leading to irreparable damage.

It was the applicant's counsel submission that the law is in favour of granting the interim injunction since there are serious questions to be tried on how the land was granted to the 2nd & 3rd respondent.

The 1st respondent counsel submitted that the 2nd and 3rd respondent are in physical possession of the land in question and they possess valid leases to the suit land. Therefore according to counsel the status quo is that the 1st applicant refused to renew the lease of the applicant and decided to allocate the land to the 2nd and 3rd respondent. Therefore the applicant has no recognized interest in the land.

The 2nd respondent's submitted that the applicant was informed of the reallocation of land in June 2020 and the same was informed that the land had been reallocated to another investor and advised to reapply for land. The respondent further submitted that status quo is that the 2nd respondent is in possession and occupation of the land and they have invested heavily in the said land. Secondly, that the applicant was advised to apply for land using the guidelines of Uganda Investment Authority, this implies that there is available land and therefore the applicant will not suffer any irreparable injury.

Determination

The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. **(See American Cyanide vs Ethicon [1975] ALL ER 504).**

A *prima facie* case with a probability of success is no more than that the Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried as was noted in **Victor Construction Works Ltd v Uganda National Roads Authority HCMA NO. 601 OF 2010.**

As to whether the suit establishes a *prima facie* case with probability of success, case law is to the effect that though the Applicant has to satisfy Court that there is merit in the case, it does not mean that one should succeed. It means there should be a triable issue, that is, an issue which raises a *prima facie* case for adjudication.

The applicant has set out serious triable legal issues related to the grant of the lease and refusal to renew a lease and a breach of legitimate expectation. The main application relates to judicial review which entails examination exercise of power by the 1st Applicant. The courts are empowered to examine the exercise of power by public bodies and ensure that any wrongful exercise of power is checked by the courts.

The whole purpose of granting an injunction is to preserve the status quo as was noted in the case of **Humphrey Nzeyi vs Bank of Uganda and Attorney General Constitutional Application No.01 of 2013.** Honourable Justice Remmy Kasule noted that an order to maintain the status quo is intended to prevent any of the parties involved in a dispute from taking any action until the matter is resolved by court. It seeks to prevent harm or preserve the existing conditions so that a party's position is not prejudiced in the meantime until a resolution by court of the issues in dispute is reached. It is the last, actual, peaceable, uncontested status which preceded the pending controversy.

The law on granting an Order of temporary injunction is set out in ***section 64(c) of the Civil Procedure Act*** which provides as follows;

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant any such orders in the interest of justice.

The burden is on the applicant to satisfy the court by leading evidence or otherwise that such applicant has a *prima facie* case in their favour. But a *prima facie* case should not be confused with a case proved to the hilt. It is no part of the Court's function at this stage to try and resolve the conflict neither of evidence nor to decide complicated questions of fact and law which call for detailed arguments and mature considerations.

It is after a *prima facie* case is made out that the court will proceed to consider other factors.

This application raises serious issue to be tried in the main cause and or a *prima facie* case.

In the instant case, the status quo to be preserved is that the land in issue should not be dealt with in anyway before the court determines whether the non-renewal or any subsequent lease or transfer of land to other parties is determined.

The applicant wishes to maintain the said land status by whatever description the land is called at the moment to avoid creating third party claims or bonafide purchases and carrying out developments before the determination of the suit.

The current state of the land in respect of its registration should not be altered by whatever description until the determination of the suit.

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of property without any authority of law or without following procedures which are fundamental and vital in nature.

The court's power to grant an interim injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this

relief as a matter of right or course. Grant of interim injunction being equitable remedy, it is in discretion of the court and such discretion must be exercised in favour of the plaintiff or applicant only if the court is satisfied that, unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff/applicant. The court grants such relief *ex debito justitiae*, i.e to meet the ends of justice.

In the result for the reasons stated herein above this application succeeds and the following order is granted;

An Interim Order issues prohibiting the respondents from carrying on any developments on the land comprised in Kyagwe Block 113 Plot 572 (Plot 1639 & 1638 Block 113) till the disposal of the main application for temporary Injunction and the Main Cause for judicial review.

It is so ordered.

SSEKAANA MUSA

JUDGE

3rd November 2020