THE REPUBLIC OF UGANDA.
IN THE HIGH COURT OF UGANDA
(COMMERCIAL COURT)
MISCELLANEOUS APPLICATION NO 567 OF 2010
(ARISING OUT OF CIVIL SUIT NO 357 OF 2010)

UGANDA DEVELOPMENT BANK LTD)……..…..APPLICANT

VERSUS

ABA TRADE INTERNATIONAL LTD}
UGANDA REVENUE AUTHORITY}
MWESIGYE NELSON }…… ……..RESPONDENTS
HAKIM SSEBANAKITTA }

BEFORE HONOURABLE MR JUSTICE CHRISTOPHER MADRAMA

RULING

At the commencement of the hearing the second Respondents counsel Mr. Lenard Ote, raised a preliminary objection to the application. He submitted that the application was incompetent as against Uganda Revenue Authority and prayed that it should be dismissed with costs. The ground of the preliminary point was that the applicant who is also the plaintiff in the main suit had not served the 2nd Respondent with the statutory notice of intention to sue as required by section 2 (1) (c) Of The Civil Procedure and Limitation Miscellaneous Provisions Act. He contended that the omission to do so renders that suit a nullity as against the 2nd Respondent and that it is a cardinal principle of law that where the main suit is a nullity, it follows that any applications or proceedings founded or arising from it are also a nullity. He referred to the case of **Fancy Stores Ltd and Another versus UCB 1994 Vol 4 KALR page 18** that the provisions of section 2 of the CPLMPA are mandatory.

He further submitted that every proceeding founded on a case that is a nullity is barred and he referred court to **Chesomi versus Silverstein 2006 Vol 2 EA 39** at page 43.

In reply counsel for the Applicant conceded that no statutory notice had been served on the second Respondent**. He** submitted that the applicant got to learn about transaction which he contends is illegal i.e. creation of a log book on the 5th of October 2010 when the Respondent was trying to take this tractor. The applicant filed the suit on the 10th of October to stay any further dealings. He referred to the case of **Meera Investments versus URA and Commissioner General** for the proposition that in matters of urgency or emergency it would be futile to give the Respondent a statutory notice as it continues to do the injury.

2nd Respondents counsel in rejoinder submitted that counsel for the applicant had not construed the substance of the objection that there was no suit. Secondly that the **Meera case** did not help the applicant because the case was decided on a different point namely that a litigant has the option to sue URA as a corporation or sue the Commissioner General who is the CEO of URA with the same result. Therefore the issue of urgency does not arise because it then lay on the ingenuity of the applicant to sue the Commissioner General of URA who will then have no need for a statutory notice. He prayed that court should follow the law over or above the convenience of litigants.

I have carefully considered the preliminary objection. Section 2 of the Civil Procedure and Limitation (Miscellaneous Provisions Act) Cap 72 provides:

> **"2. Notice prior to suing.**
> (1) After the coming into force of this Act, notwithstanding the provisions of any other written law, no suit shall lie or be instituted against—
> (a) the Government;
> (b) a local authority; or
> (c) a scheduled corporation,
> until the expiration of forty-five days after written notice has been delivered to or left at the office of the person specified in the First Schedule to this Act, stating the name, description and place of residence of the intending plaintiff, the name of the court in which it is intended the suit be instituted, the facts constituting the cause of action and when it arose, the relief that will be claimed and, so far as the circumstances admit, the value of the subject matter of the intended suit.
> (2) The written notice required by this section shall be in the form set out in the Second Schedule to this Act, and every plaint subsequently filed shall contain a statement that such notice has been delivered or left in accordance with the provisions of this section."

It is not in dispute and the law provides under item 52 of the third schedule to the Act that Uganda Revenue Authority is a scheduled corporation to which section 2 applies. The question

is whether failure to serve a statutory notice on the second respondent is fatal to the application as against the second respondent. Without much ado I find that the cited Supreme Court civil appeal number 22 of 2007 between the Commissioner General and Uganda Revenue Authority against Meera Investments Ltd by counsel for the applicant does not help the applicant's case. The judgement of court delivered by Honourable Kanyeihamba J.S.C. at page 10 of the judgement decides that:

> "in my opinion, it is only in the relation to what the law specifically provides for as its purpose and functions that the Uganda Revenue Authority may sue and be sued in its corporate name. In this respect and as a scheduled corporation, it would be entitled to the right of receiving a statutory notice under the Civil Procedure and Limitation (Miscellaneous Provisions) Act cap 72. To this extent, I would agree with Dr Byamugisha's submissions."

In that case the court held that Uganda Revenue Authority was entitled to statutory notice. However the court went on to find that under the Income Tax Act the Commissioner General could be sued in her official capacity. The plaintiff's case in this case however was brought against Uganda Revenue Authority which is a scheduled corporation. The provisions for statutory notice are mandatory except where an application is made for enforcement of fundamental rights and freedoms under article 50 of the constitution of the Republic of Uganda. The plaintiff's case against the second respondent is not for enforcement of fundamental rights and freedoms under the prescribed procedure for enforcement of fundamental rights and freedoms. There is no need for me to spell out under what circumstances enforcement of fundamental rights and freedoms would be brought without statutory notice. Suffice it to say that a suit without service of a statutory notice on the Respondent would in the circumstances of this case be null and void.

Chesoni and Another vs. Silverstein [2006] EA page 39 the High Court of Kenya at Nairobi following the case of **Macfay vs. United Africa Limited [1961] 3 ALL ER 1169 agreed at page 43** of the East African Law report cited above as follows:

> "If the act is void, then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad ... And any proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse"

Consequently, there is no valid pending suit against the second respondent. The application for a temporary injunction would therefore not stand as against the Second Respondent. It is struck out with costs.

As far as the rest of the application is concerned, the first Respondent ABA Trade International Ltd has no objection to the applicant's application for a temporary injunction. Secondly, the third Respondent also has no objection to the applicant's application for a temporary injunction. As against the first and third Respondents the application is granted as prayed in the chamber summons and as amended.

The fourth respondent however opposed the application.

Applicants counsel submitted that the application is brought under order 41 rule 1 (a) and 9 order 52 rule 1 and 3 section 98 CPA. For a temporary injunction to Restrain the Respondents from alienating, selling or dealing ("the first and 4th Respondents from taking possession of Merc Benz No... ….. (as stated in application) and further to Restrain the Respondents, their agents, servants and assignees from alienating, selling, or engaging in any dealings with Respect to the said vehicle pending determination of the main suit.

Counsel referred to the affidavit of Steven Opeitum Director of Development Finance. Also affidavit of Amos Tumwesigye the Country Manager of ACE audit control and expertise Uganda Limited who are the collateral manager was appointed by the applicant and the first Respondent. Providing warehousing security for the suit property. The Respondent affirmed two affidavits in response dated 25th of October 2010 and the second dated 7th January 2011. Counsel also referred court to the affidavit of Flavia Zirimuabagabo for 2nd Respondent. He submitted that the conditions for grant of temporary injunctions are set out in Kiyimba Kaggwa versus Katende 1985 HCB 43. That the grant of an injunction is an exercise of judicial discretion and the purpose is to preserve the status quo. Court held that the application could be granted if (a) a prima facie case with probability of success is disclosed; (b) whether irreparable loss would not be adequately compensated by an award of damages and (c) if court is in doubt it will decide on the balance of convenience.

Regarding the status quo: in the affidavit of Amos Tumwesigye who is the collateral manager and had custody of the vehicle at the time of filing of this application, paragraphs 6 – 13 thereof show that the 4th Respondent attempted to move the vehicle out of control of the plaintiff/applicant from the collateral manager. The 4th Respondent was not successful in this attempt. The 4th Respondents affidavit of 7th January he concedes that he does not have control of this vehicle (access). That is the position. Regarding the second condition a prima facie case with probability of success, counsel referred to the contents of paragraph 3 of Opeitums affidavit to show that under the facility advanced to the applicant. The goods consigned were financed by the applicant and consigned to the applicant. The bill of lading annexure "C" has the applicant as the consignee.

Counsel further noted that it is not in dispute that the applicant is the holder of the original bill of lading. The certificate of origin has the words "to the order of UDB with notice to the 1st Respondent". Legal ownership of the goods is vested in the applicant in its position as consignee and holder of a bill of lading. Counsel referred to the case of **P & O Nedloyd Uganda Ltd versus Tesco International Ltd CA Civil Appeal 86 of 2004** where it was held that in law a bill of lading is a document of title. He further submitted that the creation of a log book from any other person other than the applicant shows that the second applicant did not have the authority to do so. In the second Respondent's affidavit in reply paragraphs 3 and 4. Para 3 first Respondent presented an application in its own name etc read. Log book was issued unlawfully. These documents are not attached to the application/affidavit). Presentation of these documents ought to have been done by applicant as consignee.

The 4th Respondent also says that in paragraph 3 of the 1st affidavit that before the purchase of the tractor head that the tractor was imported by the first Respondent. We regard the transaction as suspicious.

Counsel submitted that the applicant would suffer irreparable loss that would not be adequately atoned for by an award of damages:

It is easy to contend that the truck is an asset whose value can be determined and therefore this application should not be allowed. The applicant has two contentions. (1) the client it is dealing with is the first Respondent which is a company where there is an internal dispute. The chances of recovery are almost non- existent.

Counsel further contended that Applicant is a financial institution whose business is to lend money. Money is lent out to a debtor to finance the purchase of an asset. But where there is a total regard of the borrowers obligations to applicant, there is a danger if this case is to be taken lightly other debtors would follow suit. This is irreparable damage that cannot be ascertained. He reiterated his prayers in the chamber summons as amended.

Counsel for the 4th Respondent Gilbert Nuwagaba holding brief for Counsel Nyakana agreed with the law as stated by the applicants counsel.

Regarding a prima facie case, he submitted that a perusal of the plaint shows that there is no claim against the 4th Defendant. The complaint in the plaint is about the breaches by the first defendant aided by the 1st Respondent and also the second Respondent registering this vehicle. This does not disclose a prima facie case against the 4th Respondent.

This application and supporting affidavits were meant and tailored from preserving the vehicle from Plot 38 Mukabya road. The 4th Respondent stated that the status quo had changed. Counsel complained that by the court granting the application for amendment, it effectively cut out the 4th Respondent's defence because the application specifically sought not to have the vehicle removed from a particular site. That the 1st and 4th Respondents should not take possession, he submitted that there is no bar on the person holding the vehicle not to do anything with it. The 4th applicant stated that he purchased this vehicle. If the status of the vehicle as regards where it is, is not clearly determined, the 4th defendant who purchased will lose out. A situation where the vehicle is packed along the road and abandoned, that has not been proved and that is where the flaw of this application is.

That counsel for the applicant has failed to show that if the 4th Defendant takes possession, it would suffer irreparable loss. The examples of likely loss are not borne out by any evidence on record. Secondly, they are based on mere speculation and conjecture. Court cannot base its decision on conjecture that the applicant will lose out against any other customer. Counsel for the 4th Respondent further submitted that the vehicle has a value and the 4th Defendant purchased it for value and it is not difficult to establish value of the suit property.

Whether it cannot be atoned for, the banks interest in all this matter is money. If today the first defendant paid the value of the vehicle, this matter would end. He submitted that the applicant has not shown by affidavit that the 4th Respondent is incapable of paying the value of the vehicle. Consequently the applicant has failed to show that it will suffer irreparable loss. In any case, this is a very big bank, it will not collapse because of 60,000 US$ which is the value they claim.

Regarding other aspects of the application such as alienating, selling or engaging in any dealings, Counsel for the 4th Respondent submitted that the status had already changed by the time they came to court In that the bill of lading was irrelevant. The vehicle had already been registered by URA and has a log book. The log book is a recognized document of title. The Traffic and Road Safety Act has a provision to that effect.

Secondly the vehicle has already been sold to the 4th Respondent. There is nothing for the court to stay about the sale. The court can pronounce itself on the legality of the sale but not on the sale. Counsel concluded that for the court to declare that the sale was illegal, the vehicle must be in the possession of the purchaser even if it was an illegal sale. As far as balance of convenience is concerned, he submitted that in the event of this case being lost by the applicant, the 4th Defendant who bought this vehicle will have lost immensely on the other hand the applicant is guaranteed to get its money from the debtor namely the 1st Defendant with interest.

In this case it would be the 4th Respondent who will lose out. He further requested court to look at the attitude of the first and third Respondents. They are merely looking out on their interest as against the applicant. They do not want to oppose the application lest the applicant withdraws the loan facility. Counsel submitted that the 4th Respondent bought innocently and without mincing words, there is collusion to defeat the interest of the 4th Respondent who stands to lose out. In his view the Respondents are colluding because they are not bothered about the 4th Respondent who acquired from them. He submitted that they do not want to lose the facility of more than 1 million Euros with the applicant. He prayed for dismissal of the application with costs.

Counsel for the first Respondent submitted that it was an illegal transaction brought to the attention of court and illegality once brought to the attention of court overrides all pleadings including admissions made.

In rejoinder Counsel for the applicant Mr. Kabito submitted that the applicant contrary to the contention that not complaint was raised against the 4th Respondent, has a case against the 4th Respondent under paragraph 5 (2) (3) and (4) of the plaint. Issues raised are on illegal registration. Documentation shows that the vehicle was purchased on 9th of September 2010 and registered on the 16th of September 2010. The particulars of fraud touch the 4th Respondent.

Counsel further submitted that it court was to agree with the statement made by the Respondents counsel that “the bank cannot collapse because of 60,000 dollars.” This would be counterproductive. He submitted that if every debtor was to think like that, there would be no banking industry and in his view this would lead t irreparable damage.

On status quo, regarding the log book as a document of title counsel for the applicant submitted that the first Respondent should not transfer to any other party. Moreover it is the creation of that log book that was being questioned. The contention is that a registration cannot be lawfully done with a valid BOL. The applicant still has the valid BOL therefore how did the Respondent acquire this vehicle? He asked.

The Respondents have not shown any documentation as to how they did it. Counsel further submitted on the argument that the 4th Respondent had bought and should take possession that reference should be made to clause 1 and 4 of annexure "E" to the affidavit of Mr. Opeitum. Annexure D clauses 7 (1) and 7 (2) and 7 (3). These clauses give the collateral manager full authority to release the vehicle only upon confirmation of the bank. This is the status quo. As far as the balance of convenience is concerned the applicant is losing money. The vehicle is the security of the applicant. The order is meant to preserve its value and the 4th Respondent benefits from this as well as opposed to driving and wrecking it.

Finally, the Respondent submitted that he bought innocently and tried to present himself as a victim of the first and third Respondents action. However paragraph 5 of plaint shows that there is an averment that he is not innocent. He had the benefit of looking at the BOL which shows who the owner of the goods is. Counsel reiterated his prayers.

I have carefully perused the pleadings of the parties in this application and the submissions of counsel.

The facts of the application are that the applicant filed Civil Suit No. 357 of 2010 against the Respondents seeking the following remedies:

a. that an order that the second defendant cancels the registration of the first defendant as owner of Mercedes-Benz tractor head chassis No. WDB 944232K900180 registration number UAN 520 Z;

b. a declaration that the first and third defendants sale of the said vehicle to the fourth defendant is illegal;

c. a permanent injunction to restrain the fourth defendant from making any claim of right and ownership to the said vehicle;

d. costs of the suit

The applicant then filed this application by chamber summons for a temporary injunction for orders as stipulated in the chamber summons namely to "restrain the respondents, their agents, servants and assignees in title from alienating, selling or engaging in any dealings with respect to Mercedes Benz tractor head chassis No. WDB 944232K900180, registration number UAN 520 Z, and/or removing the said vehicle from the inland Car Depot (ICD) at plot 28 Mukabya road Nakawa industrial area pending determination of the main suit."

At the commencement of the hearing counsel for the applicant moved court to amend his prayers in the chamber summons from the beginning of the word “selling” in the original prayers sought in the chamber summons and to substitute therefore the words:

" alienating selling or engaging in any dealing with Respect to Mercedes Benz No. WBB 9442332K900180 registration NO. UAN 520z and removing the said vehicle from the inland Car depot at plot 22 Mukabya road Kampala Nakawa Industrial Area pending determination of this suit. "

1st, 2nd and 3rd Respondents did not object to the application for amendment while the fourth respondent objected. Counsel Gilbert Nuwagaba counsel for the 4th Respondent submitted that the amendment sought substantially changed the application from what it was to another because the circumstances have changed and the applicant was amending to suit the changes. He suggested that the applicant withdraw the application and file a fresh one. In rejoinder counsel for the applicant Mr. Kabito submitted that the amendment sought did not change the application but only dealt with the physical location of the goods.

I allowed the amendment on the ground that the purpose of the application was to maintain the status quo. The amendment sought addressed the physical location of the vehicle. Provided there had been no dealing in the ownership of the vehicle. The movement of the physical location though in disobedience to the interim order issued by this court had not substantially affected the status quo as there has been no dealing in terms of affecting the interests in the subject matter of the application. I further noted that because URA had acted in breach of the interim order, it would bear the costs of this amendment.

The grounds of the chamber summons are that:

1. The applicant financed the importation of Mercedes-Benz Chassis No. WDB 9442332K900180, Chassis No. 45793700038494 under a trade finance facility advanced to the first respondent.

2. That upon importation, the truck was kept at Coin ICD Ltd inland car depot situated at plot 28 Mukabya a road Nakawa industrial area under the care and custody of a duly appointed collateral manager pending the first respondent settlement of its indebtedness to the applicant whereupon the applicant would authorise its taking possession and custody of the vehicle and the second respondents processing of the logbook.

3. That under the facility the applicant security is in the goods to be imported

4. that truck is now under threat of alienation and wastage to the following the first and third Respondents fraudulent procurement of the logbook for the truck from the second Respondent and subsequent sale of the same to the fourth respondent.

5. That is in the interest of, shall justice that this application be granted

The application is supported by the affidavit of Amos Tumwesigye the country manager of ACE Audit Control and Expertise Uganda ltd. In his affidavit sworn on 7 October 2010 he avers as follows:

He states that he is the country manager of ACE – Audit Control and Expertise Uganda limited, a collateral management company operating in Uganda and on the 10th of August 2010, the Applicant , ABA Trading International Ltd (first respondent) and ACE – Audit Control and Expertise Uganda limited entered into a collateral management and storage agreement in which the collateral manager agreed to warehouse four (4) Mercedes-Benz trucks model 2004/2005 purchased by the first Respondent with the financing of the applicant. He attached the agreement dated 10th of August 2010 as annexure "A"

On the 25 August 2010, four (4) Mercedes-Benz trucks including Mercedes-Benz in issue were delivered to coin ICD Ltd depot and handed over to the collateral manager. Those vehicles were not to be released without written instructions of the applicant bank. However on the 5 October 2010, their operations manager notified him that the 4th Respondent had gone there claiming ownership of Mercedes-Benz model 2543 cases number WDB 9442332K900180 and wanted to take it away as he had bought. The contract of sale and other documents were attached. The 4th Respondent had paid shillings 80 million directly to the third respondents account at United Bank of Africa. The logbook and the deposit slip were annexed as "D1, D2 and D3" to the affidavit of the collateral manager.

He confirmed that the applicant bank had not given written instructions and, refused to hand over the vehicle to the 4th Respondent.

He averred that the 4th Respondent might forcefully take away the vehicle to the prejudice of the applicant.

I have perused the management and storage agreement annexure "A" signed between ABA Trade International Ltd, Uganda Development Bank Ltd, and ACE – Audit Control and Expertise Uganda ltd. Under the interpretation section of the agreement "bank" means the applicant bank while "depositor" means ABA Trade International Ltd. Clause 9.11 of the agreement provides that "the depositor waives its Lien in respect of the goods stored in storage facilities owned or used by it.

Furthermore Clause 7 deals with the obligations of ACE and provides that: "7.7 not to allow release of any goods unless it has received written instructions from the bank stating the person to whom to release the goods and the receipt and/or issuance of documents against which the goods shall be released;"

7.8 Act on the banks instructions punctually, but in any event not later than 24 hours after receipt by it of such instructions provided that for any action which presumably requires more than 24 hours to complete, ACE shall be required to have commenced such action within 24 hours and completes the same without delay;"

Clause 9 deals with obligations of the depositor:

Clause 9.1 provides: "the depositor acknowledges that the bank has requested ACE to provide certain collateral management services under this agreement for the purposes of securing title to the goods in favour of the bank. The depositor hereby confirms that all goods covered by warehouse receipts issued by ACE, upon the issuance of such warehouse receipts, pledged to the bank, and that such goods may not be released from the storage facilities unless and until such release is authorised by the bank and a written instructions given to ACE."

Clause 10 deals with obligations of the bank.

10.4 provides: "provide ACE with clear written instructions as to the release of the goods during normal business hours. Any instructions received after 5 PM (Uganda and time) shall be deemed to have been received on the following business day;

Annexure D1 is the sale agreement indicating that the third Respondent Managing Director of ABA Trade International Ltd sold the subject matter of the suit at Uganda shillings 80 million.

The above facts are confirmed by the second affidavit sworn by Steven Opeitum and provides inter alia from paragraph 4 as follows:

“4. That acting within the powers contained in the facility letter and the facility agreement, the applicant appointed ACE – Audit Control and Expertise Uganda limited as collateral manager to warehouse the goods upon importation.

5. That subsequently, one 10th of August 2010, the applicant, the first Respondent and ACE – Audit Control and Expertise Uganda limited (herein referred to as "collateral manager") entered into a tripartite collateral management and storage agreement in which each party's role was clearly spelt out in the tripartite arrangement. A copy of the said collateral management and storage agreement dated 10th of August 2010 is attached hereto and marked "D"

6. That under the collateral management agreement, it is the obligation of the collateral manager to provide custody and security for the consignment, supervise its intake into storage, and only release or discharge the consignment from the storage facility upon receipt of our written instructions which clearly stated the person authorised to take possession of the goods.

7. that on its part of the first respondent acknowledged that the goods were pledged to the applicant and that the goods would only be released by the collateral manager upon settlement of the applicant's monies and issuance of a written authorisation. "

The first Respondent ABA trade international Ltd did not file an affidavit in reply. The second respondent Uganda revenue authority filed an affidavit in reply by one Flavia Zirimuabagabo. In light of the ruling on the preliminary objection disallowing the application as against Uganda Revenue Authority, there would be no need to refer to this affidavit. The third respondent who is also the managing director of ABA trade international Ltd did not file an affidavit in reply. The fourth Respondent however filed two affidavits in reply. The first affidavit is dated 25 October 2010 and the second affidavit dated seventh of January 2011.

Last but not least at the hearing Counsel for the first applicant Mr. Kanyunyuzi did not object to the applicant's application and stated that the first Respondent was in complete agreement with it. Counsel for the 3rd Respondent also informed court that the 3rd Respondent did not have an objection to the application.

This application was brought under order 41 rule 1 (a) and (b) which provides:

"1. Cases in which temporary injunction may be granted.

Where in any suit it is proved by affidavit or otherwise –

(a) that any property in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
(b) that the defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors,

The court may by order grant a temporary injunction to restrain such act, or make such further order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit pending the disposal of the suit or until further orders"

The rules of this court are very explicit. The court has discretionary powers to prevent the wasting, damaging, alienation, sale, removal or disposition of property pending disposal of the suit or until further orders.

The principles for grant of injunctions are trite and in the celebrated case of **Giella v Cassman Brown And Company Ltd [1973] EA 358** the Court of Appeal at Kampala sets out the general principles on which a temporary injunction may be granted. Spry V – P held at page 360 paragraphs E that:

> "The conditions for grant of an interlocutory temporary injunction are now I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction would normally not be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.

These principles are further elaborated by the Supreme Court in the case of **Robert Kavuma v Hotel International Ltd Supreme Court Civil Appeal NO. 8 of 1990 reported in (1993) II KALR 73** where Seaton JSC set out some principles in the Indian practice for the exercise of the jurisdiction of the court to grant injunctions at page 77 with which he agreed, which are that the applicant must show:

a. A fair prima facie case in support of the right claimed.
b. An actual or threatened violation of that right;
c. Productive of irreparable or at least serious damage
d. The applicants conduct should be such as not to disentitle him to assistance, it should be fair and honest, and free from acquiescence or delay
e. There must be a greater convenience in granting the injunction than refusing the injunction.

Wambuzi CJ as he then was set out the principles for grant of a temporary injunction at page 85

1. That the applicant must show a prima facie case with a probability of success.
2. That the applicant might otherwise suffer irreparable damage which would not be adequately compensated in damages
3. When the court is in doubt it would decide the application on a balance of convenience.

Honourable Justice Oder JSC (RIP) added one important principle at page 93

> "The purpose of a temporary injunction is to preserve the status quo until the dispute to be investigated in the suit can be finally disposed of.

In cases of breach of contract or other injury injunctions may be granted to prevent injury or loss In the case of **Montgomery vs. Montgomery [1964] ALL E.R. 22** at page 23 Ormrod J granted an injunction to a wife to prevent the husband from molesting her and having access to her flat. All she had to prove was a threat by the husband to do what he was restrained for and

this jurisdiction is exercised to protect a legal right. Injunctions can be granted solely to protect a legal right. (Page 24 paragraphs C – I) At page 23 paragraphs G – I lays out the principles for grant of an injunction to protect a legal right.

> "The jurisdiction to grant injunctions derive from the Supreme Court Judicature (Consolidation) Act, 1923, s. 45 (1) which is in these terms:
>
> > *'The High court may grant a mandamus or an injunction ... by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do".*
>
> Notwithstanding the extremely wide terms of this sub-section, it is, I think, a fundamental rule that the court will grant an injunction only to support a legal right."

According to the provisions of the Judicature Act Cap 13 Sect 37(1) the High Court may grant an order of mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to be just or convenient to do so.

In addition subsection 2 of the same section provides that an order may be made unconditionally or on such terms as the High Court thinks just.

The Judicature Act gives the High Court of Uganda wider jurisdiction to grant injunctions than that under order 41 of the Civil Procedure Rules. It is not necessary to cite the Judicature Act since its provision is only jurisdictional.

Turning to the facts of this case it is my humble opinion that the applicant has proved by affidavit that triable issues arise. The bank uses the right to give written instructions to release a vehicle for enforcement of payment under the facility. The vehicle though transferred, no such instructions have been written by the bank. There are triable issues as t whether the sale of the vehicle was valid and lawful. The bank seeks protection. In the case of American Cynamide it was held that it is sufficient for the applicant to prove that triable issues have arisen that merit judicial consideration. This would avoid the court prejudging the merits of the case. To quote:

American Cynamide Co. v Ethicon [1975] 1 ALL E.R. 504 at page 508 paragraphs j – page 509 Para (b) Lord Diplock held and I quote:

> "In my view the grant of an interlocutory injunction in actions for infringement of patents is governed by the same principles as in other actions. I turn to consider what those principles are. My Lords, when an application for an interlocutory injunction to

> restrain a defendant from doing acts alleged to be in violation of the plaintiffs legal right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. It is to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction:

Page 510 Para d – f.

> It is not the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the status of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.

Further held that there is no requirement for the plaintiff to establish a strong prima facie case. All the Plaintiff needs to show by his action is that there are serious questions to be tried and the action is not frivolous or vexatious. (See pages 510 c – d)

IN my judgment the applicant's application is neither frivolous nor vexatious.

Secondly the status quo is that the applicant bank has a right so far to give written instructions to release the vehicle. If the injunction is not granted the applicant loses this contractual right and the vehicle is in danger of being alienated. As to whether the vehicle was validly sold remains a triable issue. Secondly the issuance of a log book is only prima facie evidence of ownership. It is not conclusive. The issue of ownership remains to be tried. I refer to the case of **Matayo Musoke v Alibhai Garage Limited [1960] 1 EA 31 (HCU)** where it was held that a motor-car registration book is not a document of title and delivery thereof does not give to the person to whom it is delivered the means of appearing to be the owner or of having apparent authority to sell the car. Simply put the matter remains triable in light of the plaint.

The contractual obligation between the parties which gives the Applicant a right to exercise its power to either release or refuse to release the vehicle is a legal right which if not protected would interfere with the operations of the bank. In any case the 4th Respondent has not lost the vehicle per se. His right remains a triable issue. The balance of convenience sways towards protecting the legal right of the bank to determine whether the vehicle be released or not rather than sway towards granting possession to the 4th Respondent.

The final result is that

a. The application as against the second Respondent is struck out with costs.
b. The application as against the 1st and 3rd Respondent is granted on their own plea of no objection.
c. On the whole the application for a temporary injunction issues as prayed for.
d. Costs shall abide the outcome of the main suit.

Christopher Madrama

Judge

Ruling delivered in the presence of:

1. Kabito Karamagi for Counsel for Applicant
2. Kanyunyuzi counsel for the 1st Respondent
3. Lenard Ote counsel for second Respondent
4. Gilbert Nuwagaba counsel for the 4th Respondent.
5. 3rd Respondents Counsel absent
6. Patricia Akanyo Court Clerk

Signed Christopher Madrama

Judge

01 January 2008