

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 150 OF 2021
(ARISING FROM CIVIL SUIT NO. 67 OF 2021)

KYAGULANYI SSENTAMU ROBERT::: APPLICANT

VERSUS

THE COMMISSIONER GENERAL
UGANDA REVENUE AUTHORITY::: RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

Introduction

This is an application by way of chamber summons brought under **Order 41 r. 2 (1) & 9 of the Civil Procedure rules** seeking orders that;

1. A temporary injunction doth issue;
 - a. Restraining the respondent, its agents, servants or persons acting with or under it, from enforcing the impugned decision and/or letter calling for the applicant’s motor vehicle **Reg No. UBF 667 F (Toyota Land Cruiser V8)** for re-examination or otherwise until the final determination of the head suit.
 - b. Restraining the respondent, its agents, servants or persons working with and under it from arbitrarily, unilaterally, illegally and unlawfully impounding, taking and /or otherwise possessing the applicant’s motor vehicle until the final determination of the head suit.
2. Costs of this application abide the outcome of the main cause.

Grounds in support of the application

The grounds in support of this application are set out in both the chamber summons and affidavit in support of **Kyagulanyi Ssentamu Robert** which briefly states;

1. That the applicant has filed the head suit (**Civil Suit No. 67 of 2021**) which is still pending before this court and has a high likelihood of success.
2. That the respondent, its agents, servants or persons acting for it are threatening to impound, take and have in their possession the applicant's Motor vehicle registration **No. UBF 667 F (Toyota Land Cruiser)**.
3. That the respondent, its agents, servants or persons acting for it are thereby threatening the applicant's right to property and his security.
4. That the applicant's head suit shall be rendered mute and nugatory if the respondent is not restrained.
5. That the applicant shall suffer irreparable injury unless the respondent is restrained through this application.
6. That the respondent shall not be irreparably jeopardized in any way with the restraining orders being sought.
7. That the balance of convenience is in favor of granting a temporary injunction against the respondent, his agents, servants or persons acting for him.
8. It is in the interest of justice that a temporary injunction doth issue against the respondent, his agents, servants or persons acting for him until the hearing and determination of the head suit.

Grounds opposing the application

In opposition to this Application, the Respondent through Geoffrey Balamaga, a manager in the customs department of URA deposed and filed an affidavit in reply wherein he opposed the application for temporary injunction briefly stating that;

1. The respondent is an independent statutory body exclusively mandated to assess, collect and account for the Central Government tax revenue.
2. The respondent is empowered and regulated by the East African Community Customs Management Act, 2004 and the regulations made thereunder.
3. The Commissioner has powers to recall and examine goods already cleared, by requiring the owner of the same to produce them to the Commissioner for that purpose.
4. By letter dated 24th/02/2021, the Commissioner accordingly communicated to the applicant the respondent's preliminary findings and requested him to voluntarily take the suit Motor Vehicle for re-verification/examination.
5. That the applicant's lawyer responded to the letter and objected the recall of the suit motor vehicle.
6. That this court has no jurisdiction to hear this application, the jurisdiction lying with the Tax Appeals Tribunal.

Representation

The applicant was represented by Mr. Turyamusiima Geoffrey while the respondent was represented by Mr. Habib Yahaya Arike, Mr. Aliddeki Ssali Alex, Mr. Bakashaba Donald and Mr. Sam Kwerit.

At the hearing, both counsel for the applicant and respondent agreed to file written submissions which court will put into consideration while writing the ruling.

Preliminary objection by counsel for the respondent

Counsel for the respondent in his written submissions raised a preliminary objection that this court has no jurisdiction to entertain this application because it is a tax matter.

It is therefore important for this court to resolve the issue of the preliminary objection at this stage.

Counsel for the respondent submitted that in the instant case, the Commissioner customs had made a decision that the applicant voluntarily takes the suit motor vehicle for verification hence that was a taxation decision within the meaning of the TAT act, thus this court has no jurisdiction to entertain the same.

Reply to the Preliminary Objection by counsel for the applicant

Counsel submitted that the matter before court is not one for review of a taxation decision but the applicant filed the main suit to challenge the arbitrary and unilateral acts of the Commissioner wherein his rights were infringed upon and/or threatened.

Resolution by court of the preliminary objection

I have had the opportunity to consider the submissions and authorities on the Preliminary Objection. However, it is my considered view that the purpose of a temporary injunction is to maintain the status quo. The issue of jurisdiction will be handled in the main suit.

Accordingly, the Preliminary Objection raised by counsel for the respondent is overruled.

I shall now proceed to determine the temporary injunction on its own merits.

Both counsel for the applicant and respondent framed two issues for determination by this court;

Issues for determination

- 1. Whether the case is a proper one to grant a temporary injunction?**
- 2. What remedies are available to the parties?**

Submissions by both counsel on issue No. 1

Issue No. 1: Whether the case is a proper one to grant a temporary injunction?

Counsel for the applicant submitted that the applicant filed a head suit seeking a permanent injunction which is still pending before this honourable court.

Counsel submitted that the applicant is currently using the motor vehicle as his transport means and for his personal security and taking the same away will deprive him of the benefits for that time it will be away thus the head suit will be rendered nugatory.

That the applicant has demonstrated that the head suit is not frivolous or vexatious but that it has high chances of success.

Counsel further submitted that **paragraphs 23, 24, 25 and 26** of the affidavit in support, the applicant stated that the respondent is threatening to impound, take and have in their possession the said motor vehicle Reg No. UBF 667 F (Toyota Land Cruiser V8).

Counsel submitted that the applicant demonstrated that he acquired the said motor vehicle as a means of transport and security, the government agents having deprived him of his earlier motor vehicle. That taking it away will leave the applicant without transport means and also expose him to the danger of his life that he has taken care of by acquiring the said motor vehicle.

Counsel added that the applicant has shown that he will suffer irreparable injury which cannot be atoned for with damages if the application is not granted.

Counsel submitted that the balance of convenience is in favor of granting a temporary injunction against the respondent, his agents and servants.

On the other hand counsel for the respondent submitted that the grant of a temporary injunction is an exercise of judicial discretion and should be exercised judiciously.

Counsel submitted that the applicant's case does not disclose a prima facie case with a probability of success.

Counsel submitted that the act of the respondent is not illegal or unlawful since all actions taken were within the law. Counsel submitted that the application is not only frivolous but vexatious and ought to be rejected.

Counsel submitted that the applicant has not adduced evidence to show that calling for re-examination of the vehicle could cause irreparable loss. Counsel submitted that the applicant will therefore not suffer any irreparable injury which cannot be compensated by an award of damages.

Counsel further submitted that the respondent stands to suffer if the vehicle is not produced for joint examination. That the examination will validate or rebut the preliminary findings and if not examined, the respondent will have failed in her statutory duties of protecting government revenue and will be accountable to oversight bodies such as the auditor general and parliament of Uganda. Counsel added that the examination will take a short time and the applicant's alleged inconvenience of having to look for an alternative transport is not one contemplated by law.

Law applicable

Section 38 of the Judicature Act, empowers court to grant an injunction to refrain a person from doing an act.

The general considerations for the granting of a Temporary Injunction under **Order 41 Rule (2) (1) and (2)** of the CPR are that;

(1) In any suit for restraining the Defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the Plaintiff may, at any time after the commencement of the

suit, and either before or after judgment, apply to the Court for a Temporary Injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such Injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.

For a temporary injunction to be granted, court is guided by some principles as it was noted in the case of **Shiv Construction V Endesha Enterprises Ltd S.C. Civil Appeal No.34 of 1992** that;

“The applicant must show a prima facie case with a probability of success. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which could not be compensated in damages. When the court is in doubt it will decide the application on the balance of convenience.”

The law on granting of temporary injunctions in Uganda was well settled in the classic case of **E.L.T Kiyimba Kaggwa V Haji Abdu Nasser Katende [1985] HCB 43** where Odoki J (as he then was) laid down the rules for granting a temporary Injunction; thus:-

1. *The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.*
2. *The conditions for the grant of the interlocutory injunction are;*
 - i. *Firstly that, the applicant must show a prima facie case with a probability of success.*
 - ii. *Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.*

iii. *Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.*

In the case of *R v Secretary of State for Transport ex.p Factor tame Ltd* [1990] 2 AC 85 court held that;

“The main rationale for courts being reluctant in restraining public bodies is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation.”

An order for a Temporary Injunction is granted so as to prevent the ends of justice from being defeated. See: *Daniel Mukwaya v. Administrator General, H.C.C.S No. 630 of 1993; Erisa Rainbow Musoke v. Ahamada Kezala* [1987] HCB 81.

Analysis of court on issue No. 1

The purpose of granting a temporary injunction is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of. The status quo considered by courts is the one prevailing at the time of filing the application.

In the instant application, the applicant’s motor vehicle was assessed, cleared and subsequently registered by URA on 12th January 2021(**See annexure ‘A’ to the applicant’s affidavit in support of the application**). From this information, it is not in dispute that the purpose of recalling the motor vehicle is strictly for re-verification/re-examination.

At this stage, the Law does not require Court to delve into the merits of the main suit. All that is required to be proved is that there is a serious issue to be tried by Court and that, that issue is neither frivolous nor vexatious.

It should be noted that an injunction will not normally be granted unless the applicant has shown that he will suffer irreparable injury which would not adequately be compensated by an award of damages.

Basing on the submissions by counsel for the applicant, the main worry/concern for sending back the alleged motor vehicle for re-verification/re-examination is that the said motor vehicle is the applicant's main means of transport and his personal security.

However, this honorable court was not satisfied with such submissions.

It is therefore my considered view that the applicant has not adduced evidence to show that the re-calling of the said motor vehicle for re-verification/re-examination will cause him irreparable injury which cannot be compensated by an award of damages.

In the final result, this application is not a proper one to grant a temporary injunction.Issue No.1 fails.

The application therefore fails and it is hereby dismissed.

Basing on the nature and circumstances of this application, no order is made as to costs.

I so order

Dated, signed and delivered by email at Kampala this 6th day of April 2021.

Emmanuel Baguma

Judge