

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)
HCT-00-CC-MA-599-2005
(Arising from HCT-00-CC-CS-572-2005)

BRITISH AMERICAN TOBACCOUGANDA LIMITED APPLICANT

VERSUS

BAMUDA TOBACCO COMPANY LIMITED RESPONDENT

BEFORE: THE HON. MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The applicant, who is also the plaintiff in the head suit, is seeking, a temporary injunction to restrain the respondent from buying tobacco from farmers in Northern Uganda during the 2005/2006 tobacco buying season and from interfering with the plaintiff's sponsorship contracts with tobacco farmers in the same region or procuring or attempting to procure the breach of the said contracts. The applicant further seeks that the costs of this application be provided for. The application is brought by notice of motion and supported by an affidavit.
2. Four grounds are set forth in support of this application. Firstly that the applicant has a prima facie case against the respondent. Secondly it is claimed that if the injunction is not issued the applicant will suffer will suffer irreparable damage. Thirdly that it is in the interests of justice for an injunction to issue. And lastly that on a balance of convenience favour lies with issuance rather than none-issuance of the temporary injunction.
3. This application is opposed by the respondent who filed an affidavit in reply to the affidavit filed by the applicant.
4. This application is brought under Order 37 Rule 1(a) and 9 of the Civil Procedure Rules. I shall out Order 37 Rule 1(a) at the outset.

‘1. Where in any suit it is proved by affidavit or otherwise ----
(a) that any property in dispute in a 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)
..... the court
may grant a temporary injunction to restrain such an act, or make
such other order for the purpose of staying and preventing the
wasting, damaging, alienation, sale, removal, or disposition of the
property as the court thinks fit until the disposal of the suit or until
further orders.’

5. Mr. Ebert Byenkya, learned counsel for the applicant, submitted that this application is brought under Order 37 Rule 1 of the Civil Procedure Rules, and then went on to address court on the grounds set out herein above on which this application relies. I shall return to these grounds later on.
6. As will be seen on a perusal of the relevant rule it allows for applications of this nature where it is shown that any property in dispute which is the subject matter of a suit is in danger of being wasted, damaged, alienated, or wrongfully sold in execution. Firstly it must be shown that the head suit is one the subject matter of which is property in dispute. Secondly that property must be in danger of wastage, damage, alienation or sale as the case may be by a party to the suit. These two conditions must be satisfied first before considering any of the grounds that were argued by Mr. Byenkya.
7. The subject matter of the head suit is set out in paragraph 3 of the plaint. It reads,
‘The plaintiffs’ action against the defendants is for an injunction against the defendant restraining it from interfering with the 1st plaintiff’s sponsorship contracts with tobacco farmers in the Northern Region, procuring or attempting to procure the breach of the said contracts and also for an injunction restraining the defendant from participating as a buyer in the 2005 tobacco buying season.’
8. Clearly the subject matter of this suit is not about any property as intended under Order 37 Rule 1(a) of the Civil Procedure Rules. This suit is not concerned with the probable

wastage, damage, alienation or sale of any property in dispute. This suit is about interference with contracts, a matter that is governed by Order 37 Rule 2(1) of the Civil Procedure Rules.

9. On that ground alone, of being brought under the wrong law, I dismiss this application with costs. However, in event that I am wrong, I will proceed to consider the merits of the application, as if the same had been brought under the correct law.
10. Mr. Byenkya submitted that the applicant had made out a prima facie case as it had shown that the respondent was not licensed to sponsor farmers or buy tobacco in the Northern Region under The Tobacco Control and Marketing Act, 1996, and the regulations made there under. On its affidavit in reply the respondents had admitted to sponsoring some farmers which was illegal. He argued that illegality on the part of the respondent had been established, and therefore the applicant had a prima facie case established against the respondent.
11. Secondly Mr. Byenkya argued that the applicant had shown it would suffer irreparable injury as it sponsored thousands of farmers with inputs, and whenever one farmer was approached, a cause of action accrued to the applicant. It had been established that the respondent had engaged in illegal activity of sponsoring farmers.
12. Thirdly that in case of doubt, the court should determine the balance of convenience, which in his view, tipped in favour of granting the injunction rather not granting the same.
13. Mr. Robert Bauti, learned counsel for the respondent opposed the application. He argued that the applicant had not shown that it had a prima facie case against the respondent. It had failed to prove interference with the contracts in question. The applicant had not shown that its farmers had failed to deliver tobacco to it. No proof of irreparable injury was established. He submitted that the respondents are new entrants to the tobacco industry, and they were sponsoring independent farmers, which was a pre- condition to obtaining a tobacco buying licence. He prayed that this application should be dismissed.
14. I have examined the affidavit in support of this application together with the affidavit in reply thereto. The applicant claims to have sponsorship contracts with thousands of farmers but it has not named a single farmer with whom it signed such a contract. Secondly the applicant has not established, among the thousands of contracts it alleges to

have made with farmers in the Northern Region, a single contract which has been interfered with in anyway, let alone, in such a way as to procure a breach of performance of the same by the farmer.

15. In establishing a prima facie case, the applicant placed a lot of score about the illegality of the respondent's actions. He implored this court not to ignore the illegality in question, as courts do not traditionally condone illegality.
16. Illegality by itself, does not establish a prima facie case, in a civil case of interference with a contract. The acts of illegality may amount to a crime but fail to be sufficient basis to conclude that a contract has been interfered with. The applicant has not established the existence of one single contract, let alone establishing a contract that has been interfered with by the respondent.
17. The question of whether the applicant will suffer any irreparable damage can only likewise be answered in the negative. Having failed to establish a possible right that has been breached or otherwise interfered with, the question of damage, whether irreparable or not, cannot arise.
18. As I am not in any doubt as to the failure of the applicant to show that it has a prima facie case or that it will suffer irreparable harm, it is not necessary to consider, where the balance of convenience lies.
19. This application is without merit. It is dismissed with costs.

Dated at Kampala this 4th day of October 2005.

FMS Egonda-Ntende
Judge