

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISC. APPL. NO. 59/2018
(Arising from LABOUR DISPUTE NO. 49/2018)

BETWEEN

GEORGE OKOYA & BONEVENTURE MUSINGUZI..... CLAIMANT

AND

BANK OF AFRICA.....RESPONDENT

BEFORE

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

RULING

This is an application for a temporary injunction to restrain the respondent from recovering a loan advance to the applicant, pending the disposal of labour dispute reference No. 49/2018.

The background is that the applicants were granted loans while they were employees of the respondent to be recoverable through salary deductions but they were at the same time secured by means of mortgage deeds under which the applicants certain properties were mortgaged as security.

Subsequently the applicants lost their jobs with the respondent and sued the respondent vide Labour Dispute Reference No. 49/2018 for unlawful dismissal. Having lost their jobs with the respondent, the applicants had no salary to be used to recover the loans and the respondent sought to recover the loans by way of selling the properties mortgaged. The applicants not being amused by this step of the respondent lodged both an interim application and this application. The interim application was dissolved by the registrar of this court, allowing it and granting interim relief to the applicants.

It was argued for the applicants that since the question whether the respondent willfully resigned or whether they were lawfully dismissed were to be yet determine by this court, the application of **Section 15.2 (f)** of the respondent's Staff Allowances & Loans Policy was premature, unjust and high handed.

Section 15.2 (f) of the said policy according to the applicant provided:

"All staff advances/loans are repayable in full on the resignation or dismissal/termination".

There is no doubt that the relationship between the applicants and the respondent was that of a mortgager and a mortgagee which ordinarily would place the dispute in

the commercial court. The repayment of the loan was not solely based on the salary of the applicants. It is our considered opinion that the applicants while signing the mortgage deeds were aware that the property so mortgaged would be sold in recovery of the loan once they lost their jobs. This is the meaning of Section 15.2 (f) of the policy above mentioned. The dispute as to whether the resignation or dismissal/termination was illegal or not could not have been contemplated at the time of signing the mortgage.

In our considered opinion where an employee has entered a mortgage with his/her employer, enforcement of the mortgage deed is purely a commercial transaction unless the mortgage arrangement has protective clauses in favour of the employee and as such whether the employee was unlawfully terminated has no or very little bearing on the recovery process under the mortgage deed.

The question is under what circumstances do courts issue temporary injunctions?

Temporary injunctions are extra ordinary remedies which the courts utilize in special cases where the presentation of the status quo is urgent so as to prevent possible injustice. Consequently an injunction will only be granted if the court considers that unless it is so granted, injury or damage caused would not be adequately compensated by way of damages, and where the applicant has shown a probability of success in the main suit or claim.

As already intimated above, recovery of a loan under a mortgage deed is remotely connected to the claim of unlawful dismissal in this court.

We therefore do not see any injustice occasioned to the applicant if the application is not granted. In the event that the claimant succeeds in the claim he will be entitled to damages which the respondent as a bank will be capable of paying.

Thus in the case of **Ruth Kahwa Vs Centenary Development Bank and the registered Trustees of South Rwenzori diocese (Labour Dispute Misc. Appl. 134/2016)**, this court dismissed a similar application on the ground that the applicant had entered a mortgage deed and the repayment of the loan was not solely dependent on the salary of the applicant since the mortgage deed was clear that in case of the default the mortgaged property would be sold to recover the loan.

We are not satisfied that the claimant has proved the above considerations in issuing an injunction. The application is therefore denied and dismissed. No order as to costs.

Signed by:

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye

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2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Mr. Bwire John Abraham

2. Mr. Mavunwa Edson Han
3. Ms. Julian Nyachwo

Dated: 23/11/2018