

UGANDA / JUDGMENT

G.K.O Security Company Limited v NCBA Bank Uganda Limited (Miscellaneous Application 865 of 2025) [2025] UGCommC 107 (31 May 2025)

[2025] UGCommC 107

COURT

Commercial Court of Uganda

BEFORE

Susan Odongo, J

CASE / FILE NUMBER

Miscellaneous Application 865 of 2025

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISC. APPLICATION NO. 0865 OF 2025 [ARISING FROM
CIVIL SUIT NO. 0503 OF 2025]

G. K. O SECURITY COMPANY LIMITED..... APPLICANT

VERSUS

15 NCBA BANK UGANDA LIMITED.....RESPONDENT

BEFORE: HON. LADY JUSTICE SUSAN ODONGO

RULING

- 20 The application is made by Chamber Summons under the provisions of section 98 of The Civil Procedure Act, Sec 33 and 38 of the Judicature Act and Order 41 rules 1 (a), 2(1), and 9 of The Civil Procedure Rules, for orders that;
- 1. A temporary injunction be issued against the respondent and its agents from enforcing the loan and mortgage terms, registered over property 25 comprised in Kyadondo Block 232 Plot 97 Land at Kireka Banda Wakiso District.
- 2. An order suspending the monthly installments and interest be issued against the respondent until final resolution and disposal of Civil Suit no. 26 of 2025,
- 30 3. An order that the money deducted by the respondent from the applicant's account as monthly loan and interest repayment instalments be returned

- 5 and the deductions be considered after final resolution and disposal of Civil Suit no. 26 of 2025,
- 4. Costs of the application be provided for.

Background

The applicant secured a loan facility of Ugx 2.8bn (Uganda shillings two billion 10 eight hundred millions only) from the respondent to purchase land located at Kyadondo Block 232 Plot 97, Kireka Banda, Wakiso District. Prior to the loan disbursement on 27th/01/ 2025, the applicant, through its managing director, notified the respondent's relationship manager via WhatsApp of an ongoing civil suit No. 26 of 2025 filed by a one, Mr. Katende Jimmy against the 15 applicant, respondent, and the land seller, claiming interest in the property. The applicant requested guidance from the respondent and explicitly instructed it not to disburse funds to the seller or make any payments until the suit was resolved. Despite this, the respondent proceeded with the disbursement, prompting the applicant to file a civil suit No.0503 of 2025 alleging negligence and breach of

20 fiduciary duty, and to seek a temporary injunction.

Application and Affidavit in support.

The application was supported by an affidavit from Gilbert Ohairwe, a director of the applicant, affirming the loan details and alleging the respondent's negligence and breach of fiduciary duty, which led to the civil suit and the 25 temporary injunction application.

In response, the respondent's affidavit, deponed by Brenda Kyokwijuka, manager of legal services and governance, acknowledged the disbursement of the UGX 2.8 billion to the seller per the loan agreement's payment plan. The respondent denied any negligence or breach of fiduciary duty, asserting that it

30 acted diligently.

The Applicant filed a rejoinder affidavit, which has also been duly considered.

Representation and Hearing

At the hearing, the applicant was represented by Mr. Herbert Musinguzi, and the respondent by Mr. Julius Ceasar Lugaya. Both counsels filed written 35 submissions to argue the application. I have fully studied the submissions, the

5 law and authorities cited therein and all other materials on the record in deciding this application.

Applicant's submission

The applicant relied on the case of **Imelda G Basudde Nalongo v Tereza Mwewulize** 10 **and another** (Misc. Application No. 0402 of 2003) to establish the legal criteria for granting temporary injunctions. Counsel argued that the applicant has a prima facie case with a high probability of success, faces irreparable harm if the injunction is denied, and that the balance of convenience favors the applicant. Consequently, the applicant prayed for the injunction to be granted.

15 Respondent's submission

The respondent referenced the decision in **Nile Breweries Limited v New Mugisha Trading Company (U) Ltd (Civil Appeal No. 010 of 2021)** to contend that the applicant would not suffer irreparable loss, as any damages could be quantified and compensated in the main suit. The respondent further argued that the 20 balance of convenience favors it, given that the loan was disbursed using depositor funds and has to be serviced continuously. The respondent prayed for the dismissal of the injunction application.

The applicant's counsel made additional submissions in rejoinder, which were duly considered.

25 Issue for determination

The main issue in an application of this nature is whether the application for temporary injunction should be allowed.

Analysis and Determination

The established legal principle and judicial authorities hold that the primary 30 objective of granting a temporary injunction is to safeguard the subject matter of the suit and to maintain the status quo between the disputing parties until the final determination of the main action. The criteria for the issuance of an interlocutory injunction are well-settled in our jurisprudence. Firstly, the

- 5 applicant must demonstrate a prima facie case coupled with a likelihood of success on the merits. Secondly, an interlocutory injunction will generally not be granted unless the applicant stands to suffer irreparable harm that cannot be adequately remedied by monetary damages. Thirdly, where the court harbors any doubt, the application will be resolved based on the balance of convenience,
- 10 weighing which party would suffer greater hardship from the granting or refusal of the injunction **(see E. A. Industries v. Trufoods, [1972] E. A. 420)**.

The conditions that have to be fulfilled before court exercises its discretion to grant an interlocutory injunction have been well laid out as the following:-

1. The Applicant has shown a prima facie case with a probability of success.
- 15 2. The likelihood of the applicants suffering irreparable damage which would not be adequately compensated by award of damages.
3. Where in doubt in respect of the above 2 considerations, then the application will be decided on a balance of convenience (*see *Fellowes and Son v. Fisher* [1976] I QB 122).*

20 These principles can be found in cases such as **American Cyanamid Co v. Ethicon Limited* [1975] AC 396; *Geilla v Cassman Brown Co. Ltd* [1973] E. A. 358 and *GAPCO Uganda Limited v. Kaweesa and another* H. C. Misc Application No. 259 of 2013*.

i. Whether the applicant has a prima facie case against the respondents.

- 25 First, a preliminary assessment of the merits of the suit filed against the respondents is essential to ascertain the existence of a "serious question to be tried." One of the fundamental criteria for granting a temporary injunction is that the applicant's pleadings disclose a serious triable issue with a possibility of success, though not necessarily a probability of success, as established in
- 30 **American Cyanamid v. Ethicon* [1975] AC 396* . The court is not required at this stage to be convinced that a permanent injunction is likely; rather, it must be satisfied that the claim is neither frivolous nor vexatious, meaning that there is a genuine issue to be adjudicated. A serious question is therefore any issue that is not frivolous or vexatious, and as long as the claim meets this threshold, a 35 prima facie case is deemed established.
- 5 The court must be assured that the claim is substantive and that there is at least a reasonable prospect of the applicant's success at trial. The applicant's burden in this regard is modest; it suffices to demonstrate a reasonable likelihood of success on the merits. To this end, the applicant must present reasonably available evidence to convince the court with sufficient certainty that they hold
- 10 the rights in question and that these rights are being or imminently will be infringed. Moreover, the applicant must show a strong probability that the feared conduct and consequent harm will materialize.

While the court does not weigh the relative strengths of the parties' cases at this interlocutory stage, it should note that in disputes of this nature, the applicant 15 must establish that the respondent acted negligently and breached statutory and fiduciary duties.

The applicant alleges that the respondent disregarded instructions and proceeded to disburse *Ugx 2.8bn (Uganda shillings two billion eight hundred millions only)* to the seller, subsequently commencing interest charges according to the

20 loan terms ((*Refer to annexures A, B and C of the affidavit in support).*) Conversely, the respondent contends that no breach occurred, asserting that disbursement followed the agreed payment plan and that the notice to withhold payment arrived after the money was already disbursed.

Nonetheless, the pleadings of both parties raise significant issues of law and fact. 25 Accordingly, I am satisfied that the claim is not frivolous or vexatious and that serious questions warrant trial. Therefore, a prima facie case has been established.

- ii. Whether the applicant will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue?
- 30 Here the applicant must demonstrate that he/she will incur irreparable harm should the court decline to grant the injunction and permit the respondents to persist in their conduct. The term "irreparable" in this context pertains not to the magnitude of the harm, but rather to its inherent nature. Where the harm cannot be quantified in monetary terms, or where such quantification is not 35 readily ascertainable or calculable, this element of the test is typically satisfied.

5 Conversely, the availability of damages as a remedy frequently negates a finding of irreparable harm.

Irreparable damage has been defined in *Black's Law Dictionary, 9th Edition, at page 447* as *"damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement." It has also been described as "loss that cannot be compensated*

10 *for with money" (see City Council of Kampala v. Donozio Musisi Sekyaya, C. A. Civil Application No. 3 of 2000*). The fundamental purpose of granting a temporary injunction is to preserve the parties' legal rights pending the determination of the substantive litigation.

The court does not adjudicate the legal rights to the property at this interlocutory 15 stage but merely maintains the status quo until ownership or title is conclusively established or declared. Should the failure to grant the injunction jeopardize the applicant's ability to assert their claimed rights such as by allowing intervening adverse claims by third parties there exists a significant risk of causing loss that cannot be adequately compensated by monetary damages.

- 20 In the instant matter, the applicant contends that the outcome of *Civil Suit No. 0503 of 2025* remains uncertain, and that it will suffer irreparable harm if compelled to continue remitting loan payments for the suit land, which it does not possess, particularly if the suit is ultimately decided in favor of a third party. The applicant asserts that such a scenario would result in the loss of both money

- 25 and property. The respondent, however, disputes the claim of irreparable harm, arguing that the applicant's submission is misconceived, as both the amount disbursed under the banking facility and the value of the suit land paid to the vendor are ascertainable, thereby enabling the applicant to be adequately compensated through an award of damages.
- 30 Given that an injunction is an equitable and discretionary remedy, the general principle is that it will not be granted where damages constitute an adequate remedy. Prior to granting an injunction, it must be established that damages would be insufficient. Such claims are typically reserved for exceptional circumstances involving breaches of contract analogous to fiduciary breaches,
- 35 where conventional remedies prove inadequate and deterrence is a significant consideration. An injunction should not be granted where the respondent can be restored to the financial position they would have occupied but for the breach.

5 To demonstrate that damages are inadequate, the aggrieved party must generally show either that (a) the subject matter of the contract is rare or unique, or (b) damages would be financially ineffectual.

Examples of rare or unique subject matters might be the sale of an interest in land (as no two pieces of land are the same) or a one-off antique vase. In both 10 scenarios, damages may not be an adequate remedy because no market substitute exists, and the innocent party would therefore be unable to secure equivalent performance (no matter what the price). Examples of circumstances where damages may be financially ineffective might be where the defaulting party is insolvent and unable to pay; if damages would be difficult to quantify

- 15 (e.g. a contract to indemnify); if an order for the payment of damages would be difficult to enforce (e.g. because any enforcement would need to be in a foreign country); or if an express term of the contract restricts or limits the damages recoverable for that particular breach.
- In the present case, both the loan facility and the suit land, if lost, are capable of 20 full monetary compensation. Both the money and the suit land, if lost, are capable of full monetary compensation. Accordingly, this matter essentially involves a claim where, if the applicant prevails, the court will be required to award damages in Civil Suit No. 0503 of 2025, as correctly submitted by the respondent. Therefore, I find no basis to conclude that the applicant is likely to 25 suffer loss or injury that cannot be quantified in monetary terms or that is not readily calculable or estimable.
- iii. Balance of convenience (whether the threatened injury to the applicant outweighs the threatened harm the injunction might inflict on the respondents).

- 30 The third limb of the test requires the court to evaluate which party stands to suffer greater prejudice from the grant or refusal of an injunction pending the determination of the main suit. Unless the material before the court at the interlocutory stage reveals that the applicant lacks any realistic prospect of success at trial, the court must proceed to consider whether the balance of 35 convenience favours the grant or refusal of the interim relief sought.

5 The "balance of convenience" refers to the comparative detriment or inconvenience that may be occasioned to either party by the grant or refusal of the injunction. The court is required to assess the potential harm to the applicant should the injunction be denied, as well as the prejudice or detriment to the respondent should the injunction be granted. In doing so, the court considers 10 various factors, including the harm likely to be suffered by both parties from the grant or refusal of the injunction, and the preservation of the status quo as at the time of the application.

The court is enjoined to balance the scales of justice, ensuring that the suit is not rendered nugatory while simultaneously safeguarding the respondent from 15 undue interference with the exercise of his or her contractual rights. It would be improper to grant a temporary injunction pending the hearing of the suit where the suit is frivolous, or where the grant of such an order would result in greater hardship than it would avert. Save for the most straightforward cases, a decision to grant or refuse interlocutory relief will inevitably result in some disadvantage

20 to the unsuccessful party, which, if that party ultimately prevails at trial, may prove to have been unwarranted and for which damages may not be an adequate remedy.

The extent to which the disadvantages to either party would be incapable of being compensated by an award of damages in the event of success at trial is 25 always a material consideration in determining where the balance of convenience lies. The guiding principle is that the court should first ascertain whether, if the applicant were to succeed at trial and secure a permanent injunction, he or she could be adequately compensated by damages for any loss sustained as a result of the respondent's continued conduct during the pendency 30 of the suit. If damages recoverable at common law would suffice and the respondent is financially able to satisfy such an award, an interlocutory injunction should ordinarily be refused, regardless of the apparent strength of the applicant's case at this stage.

Conversely, if damages would not constitute an adequate remedy for the 35 applicant in the event of success at trial, the court must then consider whether, if the respondent were to prevail and establish the right to do the act sought to be restrained, he or she could be adequately compensated by the applicant for

5 any loss occasioned by the restraint imposed during the pendency of the suit. If damages would suffice and the applicant is financially able to pay, there is no basis on this ground to refuse an interlocutory injunction.

From the chamber summons and the supporting affidavit, the applicant seeks to restrain the enforcement of the loan facility and the mortgage registered over

10 property comprised in Kyadondo Block 232 Plot 97, Land at Kireka Banda, Wakiso District, and seeks relief from the obligation to pay monthly loan instalments and interest deductions by the respondent.

The respondent contends that the applicant has already enjoyed the benefit of the banking facility, which was intended to facilitate the acquisition of the suit

- 15 property. Furthermore, at paragraph 37 of the respondent's affidavit in reply, it is averred that the funds advanced were sourced from depositors, and that suspension of interest and repayment would be prejudicial to the respondent's commercial interests, particularly as the applicant continues to hold legal title to the suit property.
- 20 Upon weighing the respective positions of the parties, I find that the balance of convenience tilts in favour of the respondent.

Accordingly, I am persuaded that this application ought not to be allowed.

Consequently, I make the following orders:

- 1. Miscellaneous Application 0865 of 2025 is hereby dismissed.
- 25 2. The costs of this application are to abide the result of Civil Suit no. No.0503 of 2025.

Dated, signed and delivered electronically this 31st day of May, 2025.

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Susan Odongo

JUDGE

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Prepared on 13 October 2026 · Esheria