

UGANDA / JUDGMENT

Nalubale Freight Logistics v Musa and 2 Others (Miscellaneous Application 1267 of 2023) [2023] UGCommC 49 (9 August 2023)

[2023] UGCommC 49

COURT

Commercial Court of Uganda

BEFORE

Harriet Grace Magala, J

CASE / FILE NUMBER

Miscellaneous Application 1267 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 1267 OF 2023 ARISING FROM
MISCELLANEOUS APPLICATION NO. 1266 OF 2023 ALL ARISING FROM CIVIL SUIT
NO. 0863 OF 2023 NALUBALE FREIGHT LOGISTICS :::::::::::::::::::::
APPLICANT VERSUS

- 1. MUSA SAIDI
- 2. HASS DOKITA
- 3. GEORINE AGENCIES LTD. ::::::::::::::::::::: RESPONDENTS

Before Hon. Lady Justice Harriet Grace Magala

RULING

Background

This is an application that was filed under section 33 of the Judicature Act, section 98 of the Civil Procedure Act, Order 52 rules 1,2 and 3 of the Civil Procedure Rules as amended and rule 4 of the Judicature (Court Vacation) Rules. The Applicants seek for orders that a certificate of urgency be issued for the hearing of Miscellaneous Application No. 1266 of 2023 during court vacation and costs be provided for.

The Application was supported by an affidavit deposed by Ernest Wabwire, the Applicant's Director. The grounds are briefly:

- (a) That the Applicant has filed Misc. App. No. 1266 of 2023 for the attachment of the 3rd Respondent's moveable property- a truck registration number KBZ 705K, a benz actros and trailer registration number ZC 3239 which is yet to be heard and determined;
- (b) That the 3rd Respondent is likely to remove from the jurisdiction of this court their only known properties – the truck head and trailer valued at approximately Ugx. 100,000,000/= that could be attached in satisfaction of any orders and /or decrees issued by this court;
- (c) That the courts are currently in vacation and if the order of attachment before judgement is not entertained, the main application shall be rendered nugatory;
- (d) That the waiting for court vacation to end was not an option the Applicant could exercise as the status quo might change if the Respondent moved the said vehicles from the jurisdiction of this court; and
- (e) That a certificate of urgency is necessary to certify that Misc. App. No. 1266 of 2023 is urgent and should be heard.

Representation

The Applicant was represented by counsel Kiribwa Simon Peter. Present in court was Lukungu Musa, the In-House Legal Counsel of the Applicant.

Hearing

This is an *ex-parte* application for a certificate of urgency to certify that Misc. App. No. 1266 of 2023 is urgent and should be heard during court vacation. Learned counsel for the Applicant relied on the Affidavit in support of the application. The Applicant averred that on the 16th June 2023 they contracted the 3rd Respondent to transport a consignment of 23,020Kgs of cocoa beans from Olam Uganda Limited in Kampala to Mombasa-Kenya. The 1st Respondent and 2nd Respondent were the driver and turn man respectively of the MV transporting the consignment. It later transpired that the 1st and 2nd Respondent tampered with the locks of the container where the consignment was and caused a short fall of 6,840KGS of cocoa valued at USD \ \$18,912.

The Applicant reported a case of theft at the Jinja Road Station and it was registered as CRB 559/2023. The 1st and 2nd Respondents were charged at the Chief Magistrate's Court at Nakawa and are now on remand at Luzia Prison. The Applicant's Director while following up the matter was informed by the investigating officer a one Asaba Carol that the 3rd Respondent had initiated the process of removing the vehicles from police custody which prompted the Applicant through their lawyer to file Misc. Application No. 1266 of 2023.

Given that the nature of the 3rd Respondent's business required her to traverse the East African Region, if Misc. App. No. 1266 of 2023 is not heard during the court vacation, it shall not only occasion an injustice to the Applicant but it would have rendered the application nugatory.

Counsel for the Applicant prayed that in the circumstances, court be pleased to certify MA 1266 of 2023 as an urgent matter to be heard during court vacation.

Determination

The Applicant/Plaintiff has already filed a MA 1266 of 2023 which awaits to be heard, but is yet to be scheduled for hearing. Section 98 of the Civil Procedure Act refers to the inherent Powers of Court to make Orders that are necessary for the ends for justice. Pursuant to rule 3 of the Judicature (Court Vacation) Rules the Court Vacation runs from 15th July to 15th August. This means that only criminal matters shall be heard and Civil business which "in the opinion of the presiding Judge, shall be of an urgent nature". I am convinced that the Applicant has a good reason and hearing of Misc. App No. 1266 of 2023 is befitting for the issuance of a Certificate of Urgency.

I hereby **GRANT** the Applicant's prayer and **ISSUE A CERTIFICATE OF URGENCY** to enable this Court to entertain the matter during Court Vacation.

The costs of the Application shall abide the outcome of the main cause.

| Delivered electronically this__ day of _____ 2023 and | 09 | AUGUST | |

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Harriet Grace MAGALA Judge 9 th August 2023

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