

UGANDA / JUDGMENT

**Societe BISIMAKI v Damco logistics (U)
Ltd (Misc. Application No. 341/2013)
[2013] UGHCCD 97 (18 July 2013)
[2013] UGHCCD 97**

COURT

HC: Civil Division (Uganda)

CASE / FILE NUMBER

Misc. Application No. 341/2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA – NAKAWA CIRCUIT

MISC. APPLICATION NO. 341/2013

SOCIETE BISIMAKI BAKANOVA :::::::::::::::::::: APPLICANT

V E R S U S

1. M/S DAMCO LOGISTICS (U) LTD
2. M/S MADA FOODSTUFFS & CHEMICAL

DEALERS LTD :::::::::::::::::::: RESPONDENTS

RULING

This ex parte Application was originally brought under rule 4 Court vacation Rules S. I No. 41 – 7 and 0.48 rule 1 & 2 Civil Procedure Rules and S – 101 of the Civil Procedure Act, for Orders that Miscellaneous Application No. 325 of 2013 be certified as a matter of urgency and be heard during Court vacation and for costs in the cause. The Applicants are represented by Counsel Geoffrey Nangumya. When the matter came up for hearing Counsel applied to amend the rules under which the Notice of Motion is brought from Order 48 rules 1 and 2 to replace it with Order 52 rules 1 and 2 section 98 Civil Procedure Act and rule 4 of the Judicature (Court vacation) Rules which was granted.

The grounds of the Application are that Misc. Application No. 325 of 2013 is of urgent nature and should be heard during Court vacation by the Honourable Court otherwise the applicant might suffer substantial loss and irreparable damage.

Further that the Respondents are attempting to execute the Consent Judgment in Civil Suit No.347 of 2013 by selling the said goods belonging to the Applicant and as such Miscellaneous Application No. 325 of 2013 is an urgent matter to be heard during Court vacation.

The Application is supported by the Affidavit of Stephen Buchana who also points out that the Application has high chances of success.

SUBMISSIONS

Counsel Nangumya submitted that Misc. Application No. 325 of 2013 is an urgent matter to be heard in Court vacation. He pointed out that the matter is already fixed for hearing on 19th July 2013 and hearing notices have been served to the Respondent's Counsel.

Furthermore, Counsel Nangumya stated that Application No. 325 of 2013 seeks Orders of stay of execution of a Consent Judgment entered in Civil Suit No. 347/2013 which affects the goods that belong to the Applicant yet the Applicant was not party to the said suit. Mr. Nangumya argued that if the matter is not heard during vacation, a Consent Judgment will be executed to auction the goods and this would lead to loss of substantial amounts of money. He further argued that the goods are perishable and volatile.

DISCUSSION

Rule 4 of the Judicature (Court vacation) rules S. I 13 – 20 provides;

“In vacation the Court shall deal with criminal business but shall not sit for the discharge of civil business other than such civil business as shall, in the opinion of the presiding Judge, be of an urgent nature.”*

For applications of such nature, the Applicant must show that the matter is urgent ***(See Noor Muhammed vs. Jaffery Wanami Civil Revision No. 002/2007 Jinja High Court)*** and hearing of the matter must be preceded by a Certificate of Urgency ***(See Stewards of Gospel Talents Ltd vs. Nelson Onyango & 7 others HCCA 14/2008 (Civil Division).*** The matter before me is doing exactly that. As already stated, such Applications are to be brought under 052 rule and 2 of the Civil Procedure Rules ***(See Noor Muhamed vs. Jaffrey Wanami (supra)***

In the instant case, the Applicant states that the Respondent want to proceed with execution of the Consent Judgment in Civil Suit No. 347 of 2013 to which he is not party and which is being challenged. Additionally, that the Respondents intend to sell goods belonging to the Applicant in furtherance of the execution in which case Applicant would lose substantial amounts of money. Counsel Nangumya told Court that the goods in question are volatile and perishable. He explained that the goods comprise Ethyl in 240 by 250 Litre plastic drums of portable alcohol 94.6%. In my opinion these issues, which arise in Misc. Application 325 of 2013 provide sufficient proof that the matter is urgent and should be heard during Court vacation.

In the circumstances, Misc. Application No. 325 of 2013 is certified as a matter of urgency. It is set for Hearing on 19th July 2013.

Signed:.....

Hon. Lady Justice Elizabeth Ibanda Nahamya

J U D G E

18th July 2013

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