

UGANDA / JUDGMENT

Yo-Uganda Limited & 2 Others v Uganda Revenue Authority (Civil Appeal 9 of 2023) [2023] UGHCCD 388 (15 August 2023)

[2023] UGHCCD 388

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Civil Appeal 9 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL APPEAL NO. ML. 0009 OF 2023

(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 150 OF 2023)

(ARISING OUT CIVIL SUIT NO. 0101 OF 2023)

- **1. YO-UGANDA LIMITED 2. GERALD BEGUMISA-----**
APPLICANTS

- **3. DAVID SSONKO**

VERSUS

UGANDA REVENUE AUTHORITY----- RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA**RULING**

This is an appeal against the decision of the Deputy Registrar to refuse to grant a temporary injunction and mandatory injunction and is brought by way of Notice of motion against the respondent under Section 98 of the Civil Procedure Act and Order 50 rule 8, and Order 52 rule 1 of the Civil Procedure Rules for orders that;

- a) The ruling of the Learned Registrar in HCMA No. 150 of 2023; *Yo Uganda and 2 Others v Uganda Revenue Authority* be set aside.
- b) A temporary Injunction doth to restrain the Respondent, her agents, servants or employees or anyone acting on her behalf from opening, reviewing, accessing, processing, or disclosing to any person information contained in the electronic and manual records seized from the applicants until the resolution and determination of HCCS No. 101 of 2023.
- c) A mandatory injunction is issued compelling the respondent, her agents, servants or employees or anyone acting on her behalf to return to the applicants the electronic and manual records containing personal and nontax related information of the applicants until the resolution and determination of HCCS No. 0101 of 2023.
- d) Costs of this Appeal be provided for.

The grounds in support of this application are set out in the affidavit of Gerald Begumisa the 2nd appellant and Managing Director of 1st applicant which briefly state that;

- 1. The Learned Registrar fell in error; *(1) in finding that all the appellants stood to suffer no irreparable loss from disclosure of their personal information and or breach of their privacy; (2) in failing to grant a temporary injunction restraining the review or opening of personal and private information of the applicants; (3) in failing to grant a mandatory injunction compelling the respondent, her agents, servants or employees or anyone acting on her behalf to return to the applicants the electronic and manual records containing personal and non-tax related information of the applicants*.
- 2. The 1st applicant is licensed and regulated by the Central Bank of Uganda as a Payment System Operator (Large Funds Transfer Class) under the National Payment System Act.
- 3. On 14th March 2023, the respondents wrote a letter to the 1st applicant informing it of an intention to review the 1st applicant's matters and requested it to be availed with certain specified information including in electronic format. The Specified information related to: sales record, purchase, cash records, cash books, bank statements and bank deposit slips, salary pay rolls and payment vouchers, directors/related party transactions

with the firm, audited financial statements and management accounts and list & details of transactions with all other companies.

- 4. The officials of the respondent attended at the 1st applicant's premises and demanded for the said information. The 1st applicant availed information including contracts and invoices with third-parties, bank accounts statements and audited and management financial statements.
- 5. The officials of the Respondent however demanded for electronic devices including the personal mobile phone of the 3rd applicant, demanded access to the server room and threatened to close the company if the said information was not availed.
- 6. That out of fear and in addition to the information that had been requested for, the respondent took and or copied two company laptops and 2 harddisc drivers belonging to the 2nd and 3rd applicant.
- 7. The information that was seized on the laptop and disk drivers contains sensitive information that is not tax related and third-party or accountholder information which is not Yo-Uganda tax related.
- 8. That the applicants have filed HCCS No. 0101 of 2023 before this court challenging the actions of the respondent for infringing Article 27 of the Constitution and also being a violation of Personal Data rights of the 2nd and 3rd applicants.
- 9. That on 5th June 2023, the Learned Registrar refused to grant the orders sought although he found that there was a prima facie case, there was finding that there was no irreparable loss to be suffered.
- 10. That the above finding of the learned Registrar was an error of law and the applicants stand to suffer irreparable loss should the information be disclosed, reviewed or processed for the following reasons;
 - (a) Violations of the right to privacy is a breach of a constitutional right and breaches of the privacy rights and personal data rights of the applicants and the Account Holders of the 1st applicant should not be allowed to continue merely because they should be compensated in damages.
 - (b) The losses suffered in this case are irreparable in the sense that they cannot be reversed. A breach of privacy rights or breaches of personal data cannot be reversed once it happens and no amount of damages can be quantified as adequate to reverse them.
 - (c) The losses claimed in this case are non-pecuniary including business disruption from seizure of working tools, loss of autonomy and control over the personal data of the 2nd and 3rd applicants and distress from the violations.
 - (d) The damages for the non-pecuniary losses are inherently difficult to assess. It is difficult to assess the losses from the business disruption. Similarly, the loss of control or autonomy over personal data is difficult if not impossible to quantify in damages.

- (e) A lot of this Additional Information is proprietary and sensitive. It includes software designs and specifications of the 1st applicant's sensitive financial systems, the applicant's cyber security strategies and defence approaches; the 1st applicant's company strategy data such as competitor analysis, strategies and approaches to gain market share. If a third party got hold of this information, they could compromise the cyber security of the financial platforms and business strategy of the 1st applicant. The loss from this is incapable of quantification as constitutionally protected human rights and personal data rights cannot be monetised or reversed.
- 11. That it is in the interest of justice that a temporary injunction doth issue restraining the respondent from opening, accessing, processing, or disclosing to any person information contained in the electronic and manual records seized from the applicants until the final disposal of the main suit.

In opposition to this Application the Respondent through *Sam Kwerit* an Officer in the Legal Services and Board Affairs Department of the respondent filed an affidavit in reply wherein he opposed the appeal against the denial of the temporary injunction briefly stating that;

- (1) The respondent has been reviewing the operations and declarations of FINTECH companies operating in Uganda for possible tax evasion.
- (2) The review was a result of the Intelligence Reports from Financial Intelligence Authority.
- (3) That the review was intended to establish possible tax evasion and money laundering involving FINTECH companies which had consistently declared losses despite quick adaptation of their services
- (4) That the physical records were recorded on exhibit forms and the electronic records were presented to the forensic laboratory with knowledge of the appellants and the entire process was acknowledged by the 1st appellant as done on the exhibit, field acquisition, hand over and witness forms were signed by the appellants.
- (5) The respondent did not obtain general/private information relating to the 1st appellant's customer balances but rather information relating to the appellant's financial transactions.
- (6) That the respondent invited the appellants for an entry meeting scheduled for 31st March 2023 to discuss their tax affairs, but the appellant did not show up.
- (7) That the respondent has a statutory mandate to administer and enforce tax laws in a bid to collect taxes. That part of the mandate includes conducting tax investigations which were at all times conducted within the proper meaning of the law.
- (8) The respondent is fully aware of its duty of confidentiality of information or documents obtained from a tax payer and the respondent only seized records and information belonging to the 1st appellant.

- (9) That as a result of large volumes of data contained on the devices, the respondent officials spent a short time at the 1st appellant's premises and could not immediately sort the items to separate those of the 1st appellant and information belonging to the 2nd and 3rd appellants.

(10). The 2nd and 3rd appellants have failed to demonstrate which personal and non-tax related information was taken by the respondent.

(11). The appeal does not demonstrate that there is a prima facie case with a likelihood of success as the respondent has at all times operated under the confines of the law.

(12). That the appeal is meant to delay and or frustrate the execution of the mandate bestowed upon the respondent by law, to administer tax laws and the balance of convenience is in favour of the respondent

The appellants were represented by *Mr. Brian Kalule and Mr. Timoth Akampurira* while the respondent was represented *Mr. Ssali Alex Aliddeki.*

In the interest of time the respective counsel filed written submissions and i have considered the respective submissions.

Whether there are grounds for the grant of a temporary injunction?

The appellants' counsel submitted that the legal principles to be considered in an Application for a temporary injunction are *E. L. T Kiyimba Kaggwa v Hajj Abdu Nasser Katende [1985] HCB 43.*

The appellants contend that the additional information and personal information of the applicant was seized but which information has not been reviewed by the respondent. Therefore, there is a status quo to be maintained.

The information seized contains third party information of account holders of Yo Uganda and third-party transaction data held by virtue of Yo-Uganda's operations as a regulated financial institution and customer information and transactions history made on the payment gateway of Yo Uganda.

The appellants further contended that collection of information relating to bank account holders by Uganda Revenue Authority in absence of a tax investigation of a specific taxpayer or in excess of what is needed for a tax investigation of a specific taxpayer was found to be a breach of the right to privacy under Article 27 of the Constitution of Uganda and cited the case of *ABC Capital Bank Ltd and Others v Uganda Revenue Authority and Attorney General Constitution Petition No. 14 of 2018.*

The appellant counsel submitted that actions of the respondent breached the personal data rights of the 2nd and 3rd appellant when they seized personal information from the appellants without the prior consent.

The respondent's counsel submitted that the appellant seeks to restrain the respondent from performing her statutory duty which powers are granted to her by an Act of Parliament.

It was submitted that under section 41 and 42 of the Tax Procedure Code Act, the Commissioner has authority to enter any premises and extract information relevant to determine the tax obligation of any person, including any proceedings under the Act, which proceedings clearly extend to investigations as the facts in this case.

The appellant has no lawful justification for restraining the respondent from opening, reviewing, accessing, processing or disclosing to any person information contained in the electronic and manual records seized from the appellants or compelling the respondent to return to the appellants the electronic and manual records seized in exercise of her statutory mandate. Granting such an order would

amount to curtailing the respondent from performing her statutory duties and obligations of investigating the 1st appellant company.

Analysis

In the jurisprudence of Ugandan courts, the award of an injunctive order is discretionary. The exercise of judicial discretion shall not be interfered with by an appellate court unless it is shown that the trial exercised its discretion wrongly and arbitrarily. It is immaterial that the appellate court would have exercised the discretion differently. In other words, an appellate court does not as a matter of practice readily intervenes in matters concerning the exercise of discretion by a trial court merely because it would have otherwise exercised it.

The main question for this court to establish is whether the respondent should not review, access, process or disclose the information seized from the appellants and whether the same information should be returned to the appellant without analysis.

The granting of a temporary injunction is an exercise of judicial discretion as was discussed in the case of **Equator International Distributors Ltd v Beiersdorf East Africa Ltd & Others Misc. Application No.1127 Of 2014.** Discretionary powers are to be exercised judiciously as was noted in the case of **Yahaya Kariisa vs Attorney General & Another, S. C. C. A. No.7 of 1994 [1997] HCB 29.**

It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his legal right is invaded **Titus Tayebwa v Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009**.

It is trite law that for an application to be maintained three conditions must be satisfied by the Applicant as was discussed in the case **Behangana Domaro and Anor vs Attorney General Constitutional Application No.73 of 2010** that is; - The applicant must show a prima facie case with a probability of success-triable issue, that the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages and if the court is in doubt, it would decide an application on the balance of convenience.

The legal principle upon which Court exercises its discretion to grant a temporary injunction in all actions pending determination of the main suit is now well settled as seen in the wealth of authorities.

The law for granting a temporary injunction is section 64(e) of the Civil Procedure Act and general considerations for the granting of a Temporary Injunction are set out under **Order 41 Rule (1) & (2) CPR**.

The Courts should be slow in granting injunction against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals. Public interest is one of the paramount and relevant considerations for granting or refusing to grant or discharge of an interim injunction. See **Uganda National Bureau of Standards vs Ren Publishers Ltd & Multiplex Limited HCMA No. 635 of 2019**

Injunctions against public bodies can issue against a public body from acting in a way that is unlawful or abusing its statutory powers or to compel the performance of a duty created under the statute.

The courts should be reluctant to restrain the public body from doing what the law allows it to do or to execute its core mandate or function. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold or apply. See **Alcohol Association of Uganda & Others vs AG & URA HCMA No. 744 of 2019**

The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation. See **R v Secretary of State for Transport ex.p Factortame Ltd* [*1990] 2 AC 85.**

In the case of **Shell Petroleum Development Company of Nigeria Limited & Another v The Governor of Lagos State & Others* 5 ALL NTC- Lagos High Court ; Rhodes-Vivour, J held that;*

*"*Suspending the operation of a law that has not been declared unconstitutional is a very serious matter. The grant of this application would amount to just that, and* *this would be without hearing evidence. Laws are made for the good of the State and the power to tax as quite rightly pointed out by the Attorney General is a power upon which the entire fabric of society is based. A restraining order on the defendants from implementing the provisions of LAW No. 11 of 2001 would seriously impair their responsibilities to residents of Lagos State.*"*

The courts should consider and take into account a wider public interest. The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good.

Therefore, courts of law should be loath or slow to grant an injunction when a public project for the beneficial interest of the public at large is sought to be delayed or prevented by an order of injunction, damage from such injunction would cause the public at large as well as to a Government is a paramount factor to be considered. Between the conflicting interests, interest of the public at large and the interest of a few individuals, the interest of the public at large should or must prevail over the interest of a few individuals. See *ACP Bakaleke Siraj v Attorney General HCMA No. 551 of 2018*

The circumstances of the case are that the respondent is carrying out investigations of FINTECH companies for possible tax evasion as a result of the Intelligence Reports from Financial Intelligence Authority.

The review is intended to establish possible tax evasion and/ money laundering involving FINTECH companies which had consistently declared losses despite quick adaptation of their services. This is the major trigger for the commencement of the investigations in the tax affairs of the 1 st appellant.

The appellants are opposed to the said investigation and it is the basis for the suit and application for temporary injunction which was denied by the Learned Deputy Registrar. The appellants are seeking to stop the respondent from reviewing the

documents obtained from them contending that it contains third party information as well as personal data or information of the 2nd and 3rd appellants.

The respondent is empowered in execution of its mandate when carrying out investigations to access premises, records and data storage devices under *Section 41 of the Tax Procedure Code Act*. Section 41 provides as follows;

(1) For purposes of administering any provision of a tax law, the Commissioner- (a) Shall have at all times and without prior notice, full and free access to-

- *(i) Any premises or place;*
- *(ii) Any record, including a record in electronic format; or*
- *(iii) Any data storage device;*
- *(b) May make an extract or copy from any record, including a record in electronic format, of any information relevant to a tax obligation;*

- *(c) May seize any record that, in the opinion of the Commissioner, affords evidence which may be material in determining the correct tax liability of any person;*
- *(d) May seize a data storage device that may contain data relevant to a tax obligation; and*
- *(e) May retain any record or data storage device seized under this section for as long as it is required for determining a taxpayer's tax liability, including any proceedings under this Act.*

(4) A person whose records or data storage device have been seized and retained under this section may access and examine them, including making copies or extracts from under supervision as the Commissioner may determine.

(7) This section has effect despite-

(a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or record, including in electronic format; or

(b) any contractual duty of confidentiality.

The respondent seized the said documents in accordance with the above provisions of the law which elaborate enough on the steps to be taken before seizure and after seizure to avoid any disadvantage to the appellants in the process.

The appellants are seeking general interlocutory or interim orders whose effect is to *restrain the Respondent, her agents, servants or employees or anyone acting on her behalf from opening, reviewing, accessing, processing, or disclosing to any person information contained in the electronic and manual records seized from the applicants until the resolution and determination of HCCS No. 101 of 2023.*

Secondly, *a mandatory injunction is issued compelling the respondent, her agents, servants or employees or anyone acting on her behalf to return to the applicants the electronic and manual records containing personal and non-tax related information of the applicants until the resolution and determination of HCCS No. 0101 of 2023*.

The sum effect of above orders is to stop the respondent from interrogating or investigating the possible tax evasion against the appellants until when the main suit which has been filed some 4 months ago can be heard and determined. This would mean that the appellants if found liable for tax evasion which is investigated shall never be able to face the law or to pay the tax due if an injunction was granted to the restrain the respondent from doing what the law mandates it to do.

The effect of the orders sought is stop the respondent from enforcing the law simply because the appellants allege possible violation of their constitutional right to privacy or personal data rights which in my view is remote and is yet to be proved before the court. The appellants' case is premised on speculation and conjecture which this court would not at this stage give too much weight in absence of any specific violation committed at this stage or better evidence of alleged violation presented to this court.

The appellants cannot use the court to assist them in breach of the law as this would become an open floodgate for all potential tax evaders to use this as a

precedent to avoid investigation by claiming possible violation of constitutional rights. The authority cited by the appellant of *ABC Capital Bank Ltd and Others v Uganda Revenue Authority and Attorney General Constitution Petition No. 14 of 2018* is clear and quite distinguishable to the present facts before this court*.*

The respondent is not seeking information about third parties but rather information about the appellants' financial transactions and the issue of third party information is only being used as a shield to run away from possible investigations of tax evasion. The respondent has set out a case for a probable cause that has triggered this investigation and it is their duty to investigate any possibility of tax evasion by the appellants. The investigation or review is intended to establish *possible tax evasion and/ money laundering involving FINTECH companies which had consistently declared losses* despite quick adaptation of their services.

The appellants were invited for an entry meeting on 31st March 2023 to discuss their tax affairs but they did not show up. The appellants at this stage should have raised the issue of some information not being related to tax information in such a meeting instead of running to court to stop any examination or review of the documents or to stop the entire investigation into their financial transactions.

There are no hard and fast rules that can be laid down for granting interim reliefs or temporary injunctions in public law matters. The exercise of the power to grant temporary injunction must be exercised with caution, prudence, discretion and circumspection. The circumstances of each case will determine whether to grant them or not bearing in mind the various existing factors. The grounds for grant may sometimes defer from the grounds in ordinary civil suits and the same are considered with caution and appropriateness of the case.

This court deprecates the practice of granting temporary injunctions which practically give the principal relief sought in the main application for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, public interest and a host of other considerations. Where there is a serious dispute on the facts, it cannot be said that a prima facie case had been made out for the grant of temporary injunction.

The public interest considerations would justify the refusal to grant a temporary injunction and public interest should prevail over the private rights. See *Kennaway v Thompson [1981] QB 88 at 93*.

The court should not restrain the respondent in collecting revenue or managing revenue collections save under very exceptional circumstances. The grant of an injunction should be an exception and not a rule.

In the case of *Asstt. Collector, C. E, Chandan Nagar v Dunlop India Ltd., [1985]AIR SC 330*: The Supreme Court vacated the interim order characterizing it as "wholly unsustainable" and observed:

"...where matters of public revenue are concerned; it is of utmost importance to realize that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be any slightest indication of a likelihood of prejudice to the public interest."*

The right of the appellant to be protected has to be weighed against the corresponding duty or need of the respondent to also be protected against injury resulting to it by being prevented from exercising its own legal right or statutory mandate of collecting revenue if the uncertainty were resolved in its favour at the trial.

The learned trial deputy registrar justifiably refused to grant an interlocutory injunction since it would appear to be unjust and highly unreasonable to grant having regard to the circumstances of the case.

In sum and for the reasons stated herein above this appeal/application fails and is dismissed with costs to the respondent.

I so order.

SSEKAANA MUSA JUDGE 15th August 2023

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