

STEVEN MAGERO :::::::::::::::::::: APPLICANT

1. JULIE ODAKA MUNDAWAWARA
(Administrator of the Estate of the late Sam Odaka)
2. DENNIS OUNA
(Administrator of the Estate of the late Gabriel Owino)
3. MOHAMMAD WANDERA
(Administrator of the Estate of the late Gabriel Owino)
4. JOLLY WERE
(Administrator of the Estate of the late Francis Xavier Were) ::::::::::::::: RESPONDENTS
5. HAROLD WEJULI
(Administrator of the Estate of the late Alex George Wejuli)
6. TEOPISTA AGUTU
(Representative & Beneficiary of the Estate of the late Romano Masiga)
7. John Rick OSWALA
(Representative & Beneficiary of the Estate of the late Romano Masiga)
8. SAMACO INTERNATIONAL LIMITED
9. BUMERO ESTATES LIMITED
10. UGANDA REGISTRATION SERVICES BUREAU
11. ATTORNEY GENERAL

Dr.

- a) A temporary injunction do issue restraining the Respondent from making payments granted in Supreme Court Civil Appeal No. 13 of 2007 to the 1st to 9th Respondents till the disposal of the intended Appeal.
- b) Costs of the Application be provided for.

The grounds upon which this application is premised are stated in the Notice of Motion and the affidavit in support deposed by the Applicant, Steven Magero, sworn on 1st November 2023 and are briefly that;

1. On 27th April 2004, the 9th Respondent was incorporated with the original shareholders being Romano E. Masiga, Alex Wejuli and Gabriel Lawrence Owino.
2. The Applicant, together with Denis Ouna were appointed administrators of the estate of the late Gabriel Lawrence Owino vide Administration Cause No. 1669 of 2016.
3. By virtue of a settlement in Supreme Court Civil Appeal No. 13 of 2007, the 9th Respondent was to be paid Shs. 23,128,000,000/= by the Attorney General and certain payments were made leaving a balance of Shs. 20,128,000,000/=.
4. Owing to the disagreements regarding the shareholding of the 9th Respondent, Company Cause No. 2 of 2021 was filed by the 1st to 8th Respondents against the 9th and 10th Respondents and court ordered that the administrators of the Estates of the



- original shareholders be entered as shareholders in the company register under Article 31 of the Articles of Association.
5. Court ordered, among others, that the registered shareholders attend a special meeting not later than 45 days from the date of the order to approve the minutes and resolutions of the meeting held on 5th July 2017.
 6. On 21st September 2022, the 2nd, 3rd, 5th, 6th and 7th Respondents purported to hold a meeting of shareholders of Bumero Estates Limited and restrained the Applicant from attending the said meeting.
 7. The Applicant was aggrieved by the meeting and filed Miscellaneous Application No. 214 of 2023 which was dismissed by the High Court on 20th October 2023.
 8. The Applicant has got information that the 11th Respondent is in the process of making payments to the 1st to 9th Respondents hence this application for a temporary injunction.
 9. The Applicant will suffer irreparable loss if this application is not granted.

The 3rd Respondent filed an affidavit in reply deposed on the 18th of March 2024 opposing the application and stating briefly that;

1. The 2nd, 4th, 5th, 6th and 7th Respondents are also Directors in the 9th Respondent company.
2. In 2016, it transpired that the company records at the Registry of companies were missing giving rise to company cause No. 38



of 2016 and Misc. Application No. 203 of 2017 seeking to reconstitute the company.

3. The High Court made orders directing the reconstitution of the company which culminated into the Registrar of companies convening a meeting on 5th July 2017.
4. At the meeting, payments for shares that had been made by all persons were recognised and it was unanimously resolved to appoint a Board of Directors and to allot shares that had by August 1986 been paid for by various persons.
5. These resolutions were never extracted and filed with the Registrar of Companies which made impossible for the 3rd Respondents and other shareholders to follow company business in the 9th Respondent.
6. The Respondents commenced Company Cause No. 03 of 2021 and court directed several steps to be taken in order to regularize the records of the company.
7. The Applicant commenced Misc. Application No, 0214 of 2023 which application was dismissed for lack of merit.
8. The Applicant filed a Notice of Appeal and the current application without seeking leave to appeal the ruling in High Court Misc. Application No. 0214 of 2023.
9. The Applicant's application ought to have been filed in the High Court first and there are no exceptional circumstances that warrant the filing of this application in the Court of Appeal.



Representation

At the hearing of this Application, Ms. Amany Viola appeared for the Applicant, holding brief for Mr. Peter Walubiri. The 1st to 9th Respondents were represented by Mr. Martin Mbaza Karemera, holding brief for Mr. Enock Barata, while Mr. Moses Sempijja appeared for the 10th Respondent, holding brief for Ms. Cynthia Mpoza.

Consideration of the Application

I have carefully considered the law applicable to this application and the authorities cited to court together with the affidavit evidence on record.

For a temporary injunction to be granted, court is guided by certain principles which were laid out in the case of **Shiv Construction V Endesha Enterprises Ltd, S.C. Civil Appeal No. 34 of 1992** where it was held that;

“The applicant must show a prima facie case with a probability of success. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which could not be compensated in damages. When the court is in doubt it will decide the application on the balance of convenience.”

Thus, the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit



is finally disposed of. The conditions for the grant of a temporary injunction are;

1. Firstly, that, the applicant must show a prima facie case with a probability of success.
2. Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
3. Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.

An order for a Temporary Injunction is granted so as to prevent the ends of justice from being defeated.

1. *Prima facie* case with likelihood of success

The Supreme Court in the case of **Gashumba Maniraguha vs Sam Nkudiye Civil Application No. 24 of 2015**, held that the likelihood of success is the most important consideration in an application for stay of execution. Therefore, it is incumbent upon the Applicant to avail evidence, or material to the court in order for it to establish whether or not the Applicant has a prima facie case on appeal.

The grounds as stated in the Applicant's affidavit in support of the application do not contain any statement therein averring that the Applicant's appeal has a likelihood of success. The Applicant simply narrates the events that led to the filing of Misc. Application No. 214 of 2023. Failure by the Applicant to demonstrate that his appeal has a likelihood of success was a serious omission.



Secondly, the Respondent raised an issue of validity of the Applicant's appeal in paragraphs 18-20 of the 3rd Respondent's affidavit in reply in which he stated that the Applicant has no right of appeal to this court against the decision in Misc. Application No. 0214 of 2023.

Miscellaneous Application No. 0214 of 2023 was filed under Section 64 (c) and (e) of the Civil Procedure Act seeking for orders that the resolutions of the 9th Respondent passed at the meeting convened on 21st September 2022 be cancelled, an injunction restraining the 11th Respondent from paying the monies in respect of Supreme Court Civil Appeal No. 13 of 2007 and an injunction restraining the 9th Respondent from disbursing any funds received from the 11th Respondent.

An order under Section 64 (c) and (e) of the Civil Procedure Act is not appealable as of right. Section 76 (1) of the Civil Procedure Act lays down the orders from which an appeal lies. It provides as follows;

“ 76. Orders from which appeal lies

(1) An appeal shall lie from the following orders, and except as otherwise expressly provided in this Act or by any law for the time being in force from no other orders—

(a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;

(b) an order on an award stated in the form of a special case;

(c) an order modifying or correcting an award;



(d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(e) an order filing or refusing to file an award in an arbitration without the intervention of the court;

(f) an order under section 65;

(g) an order under this Act imposing a fine or directing the arrest or detention in prison of any person, except where the arrest or detention is in execution of a decree;

(h) any order made under rules from which an appeal is expressly allowed by rules “

It is therefore quite clear that an order made under Section 64 (c) and (e) of the Civil Procedure Act is not amongst those which an appeal can lie. Thus, the Applicant's appeal from the decision in Miscellaneous Application No. 214 of 2023 would require the leave of court. From the affidavit evidence on record, there is no evidence that an application for leave has been made either to the High Court or to this Court for that matter as is required by rule 40 of Court of Appeal Rules.

In the absence of such an application, this court cannot find a prima facie case where the appeal itself is invalid.

2. Irreparable damage

The second consideration is whether the Applicant will suffer ***irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.***



The Applicant's counsel referred to paragraph 13 of the Applicant's affidavit in support of the application and argued that the disagreement over the shareholding of the 9th Respondent revolves around the management of a large sum of money to be paid by the 11th Respondent. He argued that if this money is paid to the wrong persons, the company and its shareholders will suffer irreparable loss.

Irreparable damage was defined in **Black's Law Dictionary, 9th Edition at page 447** to mean; *"damages that cannot be easily ascertained because there is no fixed pecuniary standard measurement"*

In my understanding, the applicant has to show that the damage bound to be suffered is such that it cannot be undone. No amount of monetary recompense can restore the injured party to the position he or she was before the damage was visited on the individual.

In the instant case, the Applicant has not demonstrated the injury he is are likely to suffer if this application is not granted. The Applicant stated that he is a holder of Letters of Administration of the estate of the Late Gabriel Owino, together with Dennis Ouna the 2nd Respondent. The Applicant is also a Director of the 9th Respondent, the same company to which the monies are to be paid. I do not find any irreparable damage bound to be suffered by the Applicant in this case, if the said monies are paid to the Company in which he is a director and shareholder before the determination of the appeal. I



therefore find that the element of irreparable damage has not been proved by the Applicant.

With regard to balance of convenience, I reiterate that this court is only duty bound to consider such an application on the balance of convenience where it is in doubt on the first two considerations. Having found as I have that the Applicant has no prima facie case and that he will not suffer irreparable damage, I find no reason to delve into the balance of convenience.

Before I take leave of this matter, I must note that from the evidence on record, the order of payment to be made to the Respondents was given by the Supreme Court in S.C.C.A No. 13 of 2007. The orders sought by the Applicant in the instant application, would amount to halting the order of the Supreme Court. In the context of the facts pertaining to this application, this would be untenable.

This application is accordingly dismissed. Costs shall abide the outcome of the appeal.

I so order

Dated this 19th day of April 2024

.....
OSCAR JOHN KIHKA
JUSTICE OF APPEAL