

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

**CIVIL APPLICATION NO. 538 OF 2022
ARISING OUT OF CIVIL APPLICATION NO.537 OF 2022
ARISING OUT OF CIVIL APPEAL NO.....2022
ARISING OUT OF HCMA NO. 671 OF 2022 AND HCCS NO. 0424 OF 2022**

1. SIMBA PROPERTIES INVESTMENT CO. LTD | :::::APPLICANTS
2. SIMBA TELECOM LTD

VS

1. ROBERT KIRUNDA & NOAH SHAMAH
WASIGE trading as M/S KIRUNDA
& WASIGE ADVOCATES | :::::RESPONDENTS
2. FESTUS KATEREGGA trading as Quick Way
Auctioneers & Court Bailiffs
3. COMMISSIONER LAND REGISTRATION

**RULING OF GASHIRABAKE CHRISTOPHER JA
(SINGLE JUSTICE)**

When **Civil Application NO. 538 of 2022** came up for hearing, Mr. Fred Muwema, Friday Roberts Kagoro and C. K Nsubuga appeared for the applicants and Mr. S. Tendo Kabenge, Robert Kirunda and Kasabiti Diana appeared for the Respondents.

Mr. Fred Muwema applied for a Protective Order, stating that there is an imminent threat of sale of the applicant's properties comprised in;

- **LRV 3895 Folio 4 Plot 3 Water Land Naguru Kampala,**
- **LRV 3435 Folio 10 Water Land Plot 12 Naguru Kampala and**
- **LRV 4294 Folio 20 Plot 12 Moyo close.**
- **LRV 3903 Folio 13 Plot 32 Elizabeth Avenue Kololo**
- **LRV 3891 Folio 18 Plot 1 Water Lane Naguru Kampala**

- **LRV 3895 Folio 3 Plot 5 Water Lane Naguru Kampala**

The properties were advertised for sale by the respondents as Agents of Vantage Mezzanine Fund Limited, Vantage Mezzanine Fund II Partnership and Derek Alexander II Director, Vantage Mezzanine Fund II proprietary Limited.

Mr. S.T Kabenge and Mr. Robert Kirunda objected to the application on ground that no threat of sale of the property was impending as alleged by the applicants. That the sale which should have taken place on the 18th June 2022 never took place and no such sale is contemplated.

Further that the application was improperly before this Court as the parties were in arbitration and therefore this Court lacked jurisdiction as per **Section 9 of the Arbitration and Conciliation Act.**

That the Mortgagees were not parties to the suit and their Agents (Robert P. Kirunda and Noah Shammah Wasige Trading as Ms Kirunda & Wasige & Advocates), Festus Kateregga trading as Quick way Auctioneers and Court bailiffs) were not the right parties in this application.

Counsel for the applicants submitted that before the lapse of 30 days after the advertisement for sale, the property is still available for sale and therefore the threat is still there.

Counsel for the respondents vehemently refuted this submission.

Counsel for the applicants prayed that the protective order be given under the provisions of the Rules of this **Court particularly Rule 2(2) of the Judicature (Court of Appeal) Rules) Directions, SI 13-10** to preserve the status quo.

After carefully listening to the submissions of both counsel, I am convinced that **Rule 2(2) of the Judicature (Court of appeal Rules) Directions SI 13-10** empowers this Court to make orders of Court where it is evident that there is a threat or eminent danger, of the sale of the property.

There is a copy of the advert in Daily monitor of Wednesday May 18, 2022 attached as **annexure B** to the application. If indeed as the counsel for the respondents submitted that there is no threat or imminent danger of sale of the property, why would the advert in the Daily monitor have been placed in the newspapers? The advert has not been withdrawn. Is a prudent person supposed to ignore the advert? The answer is a resounding No!!. Would anyone rely on the advert to offer to buy the property. Yes!!

I am alive to the provisions of **S. 9 of the Arbitration and Conciliation Act** and submission that this Court has no jurisdiction in this case.

The application is not meant to stop or interfere with the ongoing arbitration, which has to continue, but to protect the property the subject of the arbitration until the arbitration is concluded.

Having addressed myself to the above as I have done, there is all evidence that there is a real threat of sale/disposal of the property before determination of the main arguments of jurisdiction of this Court can be determined.

For this reason, I grant the Protective Order sought.

Any further form of threat of sale or dealing in the advertised property is hereby stayed until the determination of the application of interim order of stay.

I order accordingly. I give no order as to costs.

Dated at Kampala this.....27th.....day of.....June.....2022.


C. Gashirabake
Justice of Appeal