

HANDLING OF INTERLOCUTORY APPLICATIONS BY A **REGISTRAR.**

1. Definition.

The word **Interlocutory** is defined in the Black's Law Dictionary, 9th Edition as an interim or temporary; not constituting a final resolution of the whole controversy.

An interlocutory application is defined as a motion for equitable or legal relief sought before a final decision. It is an order of court, as a temporary measure, directing a party to the proceedings to do or to refrain from doing a specified act.

It is limited to apply until the final hearing or final determination by the court of the rights of the parties.

An interlocutory injunction therefore presupposes a pending suit.

A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual

or threatened by him or her of legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court.

The right to obtain an interlocutory injunction is merely ancillary and incidental to a pre-existing cause of action. See **The Siskina (1979) A.C 210 at 256 as per Lord Diplock.**

In Channel Tunnel Group Limited versus Balfour Beatty Construction Limited (1993) A.C 334 at 360 – 362 it was held by Lord Mustill that “the doctrine of the siskina, put at its highest, is that the right to an interlocutory injunction cannot exist in isolation, but it is always incidental to and dependent on the enforcement of a substantive right which usually although not invalidly takes the shape of a cause of action.....”

2. TYPES OF INJUNCTIONS.

(i) Perpetual/Permanent;

This is granted at the final judgment after the trial and it is intended to restrain a party forever from doing a specified act and is granted at the conclusion of the trial after hearing both parties to the suit.

(ii) **Temporary injunction/Interim injunction;-**

This is a provisional order made before the trial. This is intended to restrain a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until further orders of the court.

(iii) **Mandatory injunction; -**

This is a court order requiring specific acts to be done i.e they compel, command or order some person to do something. It is the substance of the order that makes it mandatory.

(iv) **Prohibitory injunction;-**

This is an order to refrain from doing specific acts.

(v) **Quia timet injunction; -**

Order to prevent an apprehended legal wrong, where non has been committed at the date of the application (because he or she fears). A legal doctrine that allows a person to seek an equitable relief from future probable harm to a specific right of interest.

3. LAW APPLICABLE

Order L Rule 3 of the CPR provides that “All formal steps preliminary to the trial, and all interlocutory applications, may be made and taken before the registrar.

Details of interlocutory applications that can be handled by a Registrar.

The Civil Procedure (Amendment) Rules, 2019

FORM 14A & 14B

(Order XIA rule 1)

- (i) Actions to refer a matter to an expert.
- (ii) Consolidation of Suits.
- (iii) Reference of a matter to a Magistrates Court.

- (iv) Security for costs.
- (v) Amendments of pleadings.
- (vi) Service of pleadings (extension of time)
- (vii) Inspection of documents.
- (viii) Application for interrogatories
- (ix) Admission of statements, reports.
- (x) Plan for locus in quo sketch plan
- (xi) Further and better particulars
- (xii) Withdrawal and adjournment of suits.
- (xiii) Suits by paupers
- (xiv) Attachment before judgment.
- (xv) Temporary injunctions
- (xvi) Enlargement of time.

4. **General Principles for grant of Temporary injunctions and Interlocutory orders.**

Order XLI (a) of the CPR provides that “where in any suit it is proved by affidavit or otherwise-

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying an and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
- (c) “The court shall in all cases, before granting an injunction, direct notice of the application to be given to the opposite party”.
- (d) Any order for an injunction may be discharged, or varied, or set aside by the court on application made to the court by any party dissatisfied with the order.

Amendment of Order L.

3 “A Registrar shall handle interlocutory matters within fourteen days of the filing of an application” and

3A (i) The court shall, in all cases, before granting relief for an interim order, direct notice of the application to be given to the opposite party, except where it appears that the giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated.

(2) All applications for interim relief shall be inter parties except for exceptional circumstances that may include; -

- (a) Where the matter is urgent in nature;
- (b) Where there is a real threat or danger; or
- (c) Where the application is made in good faith.

(3) The court shall only consider the hearing of an application for interim relief where there is a pending substantive application with a likelihood of success.

(4) An application for an ex parte interim application shall be made orally.

(5) Subject to sub rule (2), an ex parte interim order shall be granted only in exceptional circumstances and for a period not exceeding three days from the date of issue and upon hearing of the substantive application the order shall lapse.

(6) The applicant shall, within the three days referred to in sub-rule (5) present proof of effective service on the opposite party.

(7) Where proof of effective service is not presented within the period stipulated in sub rule (6), the order shall lapse

CASE LAW.

American Cyanamid versus Ethicon Limited (1975) AC 396

stipulates that the court should as a general rule have regard to the following criteria;

- (a) Is there a serious issue to be tried?
- (b) Are damages an adequate remedy?

- (c) Where does the balance of convenience lie?
- (d) Are there any special factors?

Kiyimba – Kaggwa versus Haji A N Katende (1985) HCB 43, held that the basis of granting a temporary injunction is to preserve the status quo until the question to be investigated in the suit is finally disposed of.

The conditions for the grant of an interlocutory injunction are first that the applicant must show a prima facie case with a probability of success (triable issue).

Secondly, such an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated or atoned for by an award of damages, Thirdly, if court is in doubt it will decide an application on the balance of convenience.

The court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, if the

injunction is refused, and compare it with that which is likely to be caused to the opposite party if the injunction is granted.

If on weighing conflicting probabilities, the court is of the opinion that the balance of convenience is in favour of the applicant; it would grant injunction, otherwise refuse to grant it. Consider comparative inconvenience.

Status Quo.

Status quo means simply the “existing state of things or “existing condition” at a particular point in time.

INJUNCTION AGAINST GOVERNMENT

It used to be a rule that injunctions could not be issued against Government under the Laws of Uganda (see S.14(1) (a) of the Government Proceedings Act Cap 77)

However, in the case of **Osotraco Limited versus Attorney General H.C.C.S No. 1380 of 1986**, which was upheld in the Court of Appeal vide **AG versus Osotraco Ltd C.A.C.A No. 32 of 2002** it was held

that an injunctive relief and eviction order could issue against Government. The court noted that section 14 of the Government Proceedings Act provides less appropriate relief to be substituted for appropriate relief and this runs contrary to the principle that justice shall be done to all irrespective of their social or economic status.

The court considered the import of immunity granted to the state as no longer justifiable. In light of the 1995 constitution and that the provisions of the law providing for that immunity had to be construed in such a way as to conform with the new constitutional dispensation.

There was no sound reason why government should be given preferential treatment at the expense of an ordinary citizen. For example, Article 26 of the constitution provides for prompt payment of fair and adequate compensation prior to the states' compulsory acquisition of any property. See **Uganda National Roads Authority Vs. Irumba Asumani & Ors S.C.C.A No. 2 of 2014**. The court ruled that the Land Acquisition Act (Cap 226) was unconstitutional in so far

as it provided for the compulsory acquisition of property before the payment of compensation to the owner.

CONCLUSION.

The intention of the legislature to allow Registrars to handle such applications was the need for expedition.

It is my considered view that the majority of cases in our system that have caused a backlog are interlocutory applications that may cause a delay in hearing the substantive matters.

Under Order XII rule (3) of the CPR such applications before a Judge should be finalized within 45 days (one and half months).

Let us therefore aim at disposing of these applications within the required time frame.

I thank you for listening to me.