

LEGAL ALERT

An Underutilised Remedy

Using Order 41, Rule 4 to Discharge
a Temporary Injunction

When a temporary injunction is issued against your client, the instinct is to either appeal or apply for review. But there is a third route which is underutilised, procedurally uncomplicated, and hiding in plain sight. Order 41 Rule 4 of the Civil Procedure Rules ("the CPR") empowers any dissatisfied party to apply to the same court that granted the injunction to have it discharged, varied or set aside. No appeal, no review, no higher court. Just a return to the court that issued the order, armed with sufficient cause.

The Grounds

Temporary Injunctions are issued under Order 41, Rules 1 and 2 of the CPR. However, Order 41 Rule 4 provides as follows:

"Order for injunction may be discharged, varied or set aside.
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."

The rule does not expound on the grounds, so the courts have had to fill that gap. In *Robert Kavuma v Hotel International Ltd*, SCCA No. 8 of 1990 [1993] II KALR 73, the Supreme Court identified the following recognised grounds for discharge: (i) material non-disclosure when the injunction was obtained; (ii) failure to comply with the terms on which it was granted; (iii) that the facts do not justify injunctive relief; (iv) the oppressive effect of the order; (v) material change in circumstances since the injunction was granted; (vi) failure to prosecute the main suit with due speed; and (vii) interference with the rights of innocent third parties.

The High Court in *Uganda National Bureau of Standards v Ren Publishers Limited & Another*, Misc. Application No. 635 of 2019 enriched this framework. Justice Musa Ssekaana held that it would be absurd for a court to be powerless to act where its own order is causing injustice or being abused, and that discharge is warranted where circumstances have materially changed or where the party sheltering under the injunction has conducted itself in a manner inconsistent with its purpose. His Lordship held:

"The main question for this court [is] to establish whether in such circumstances the injunction can still be justified."

How It Differs from Appeal and Review

An appeal challenges whether the injunction was correctly granted. The appellate court asks whether the judge below misdirected himself on the law or reached a plainly wrong decision on the material before him. It is backward-looking, expensive, slow, and subject to a high threshold of intervention.

A review under Order 46 asks whether the original decision should be reconsidered, typically because of newly discovered evidence or an error on the face of the record. It too is focused on the original decision and whether something was wrong with it.

A Rule 4 application asks an entirely different question: not whether the injunction was correctly granted, but whether it should continue. A party can fully accept that the injunction was correctly granted and still succeed under Rule 4 if circumstances have since materially changed, or if the order is being abused. The same court hears it, can be moved urgently, and carries none of the prerequisites that attend to appeals or reviews.

A Special Case: Injunctions Issued by a Registrar

Registrars of the High Court regularly issue interim and temporary injunction orders under delegated powers. Order 41 Rule 4 does not expressly address what happens when a discharge application arises from such an order. The answer, properly understood, is that the application must be made before a Judge, not the Registrar.

In *Attorney General & Uganda Land Commission v James Mark Kamoga & Another*, SCCA No. 8 of 2004 [2008] UGSC 4, the Supreme Court held that a Registrar acts as an officer of the High Court exercising delegated functions, not as an independent court. The Court confirmed that:

"...the power to review judgments or orders of the High Court (including those entered by the Registrar) is not among the powers delegated to the registrar."

The same principle applies to Rule 4 applications. Discharging an injunction is a supervisory function that calls upon the court's inherent equitable jurisdiction, a function reserved to the Judge. Where the Registrar granted the injunction, the Rule 4 application should therefore be filed by Notice of Motion directed to a Judge of the relevant Division.

Conclusion

Order 41 Rule 4 is a powerful but underutilised provision. When a temporary injunction is causing real damage, whether through changed circumstances, abuse by the holder, or abandonment of the main suit, a direct application to discharge it is often faster, cheaper, and more appropriate than an appeal or review. The grounds are broader than most practitioners appreciate, the procedure is straightforward, and the remedy is immediate. It is time more practitioners reached for it.

Contact Us

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