

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA (COA) AT KAMPALA

CIVIL APPLICATION NO. 333 OF 2013

KASOM FRED.....APPLICANT

5

VERSUS

KIZZA CHRISTOPHER RESPONDENT

CORAM:

HON. MR. JUSTICE KENNETH KAKURU JA.

(Single Justice)

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RULING OF THE COURT

This matter came to me as single Justice of Appeal by way of reference from the Ruling and Order of His Worship Erias Kisawuzi dated 24th July 2012, in which the respondent Kizza Christopher was committed to civil prison for contempt of Court.

15 From what i could gather from the Court record the background to this reference is as follows;-

Fred Kasoma the applicant was a party in **Civil Suit No. 35 of 2010** in Nakawa Magistrates' Court. He lost the suit and appealed to the High Court at Nakawa *vide* **High Court Civil Appeal No. 59 of 2010**. He again lost the appeal on 1st June 2011. Not being satisfied, he lodged a second appeal to this Court, by filing a notice of appeal on 6th June 2011.

20 He had deposited Ugshs. 10,000,000/- as security for due performance of the decree at the Magistrates' Court. He also deposited Ugshs. 10,000,000/- at the High Court for the same purpose.

He filed in this Court Civil Application No. 120 of 2011 for an interim order stay of execution pending appeal, which was granted by the Registrar on 14th June 2011. The order among others

required that the *status quo* be maintained by retaining the vehicles that had been impounded and parked at Nakawa Court.

It appears the said vehicle had been impounded and parked at Nakawa Court in execution of the decree. The interim order was further extended to 14th October 2011 and again to 15th November
5 2011.

On 6th December 2011 this Court granted a substantive order of stay of execution apparently by consent of parties before the Registrar. The parties to the appeal and to the consent order are Kasoma Fred as the appellant and Sembatya James as the respondent.

The respondent herein Kiiza Christopher is not a party to the appeal neither was he a party to the
10 suit in the Magistrates' Court from which the appeal arises. He was not a party to the appeal at the High Court.

It appears that Kiiza Christopher was a third party. Apparently the attached Motor Vehicle is a Fuso Lorry Registration number UAN 394Z. On that vehicle was a milk tank, belonging to the said Mr. Christopher Kiiza the respondent. Having realised that the said lorry had been
15 impounded by Court and parked at Nakawa Court with his milk tank thereon, he made an application to Nakawa High Court for the release of his milk tank, which he contended was not part of the truck and therefore not subject to attachment.

The Assistant Registrar Nakawa High Court heard the application and duly allowed it. He made the following order.

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1. *"A release order does issue allowing the applicant to take possession of his milk tank that was seized on Motor vehicle No. UAN 394N which is a subject of the main cause in Suit No. 535 of 2010 but not part of the said Motor vehicle.*
 2. *The application is accordingly allowed that the said Tank fixed on Motor vehicle No. UAN 394Z be removed from the said Motor vehicle and be handed to the applicant. It is
25 not part of Suit No. 535 of 2010."*

Following the above order, the respondent Kiiza Christopher took delivery of his milk tank leaving behind the Lorry as clearly set out in the order above.

The appellant Kasoma Fred, then filed in this Court Misc. Application No. 151 of 2012 the subject of this reference seeking warrant of arrest against Kiiza Christopher and Sembatya James for violation of the orders of this Court issued on 14th June 2011 and 6th December 2011 which were the interim order of stay of execution referred to earlier in this Ruling.

- 5 The learned Registrar Erias Kisawuzi allowed the application and committed Kiiza Christopher to civil prison and ordered that he returns the tanker before his release. In any event not later than October 8th 2012.

It appears Kiiza Christopher served the sentence but did not return the tank. Another warrant of arrest was issued against him on 8th April 2013. The applicant sought to appeal against the order
10 of the Registrar but was out of time. He applied for extension of time, which i granted on 29th November 2013, when i fixed the Reference for hearing on 6th December 2013.

The reference was fixed in Court in presence of both counsel for the applicant and the respondent. When the reference came before me for hearing Mr. Omongore counsel for the applicant for no apparent reason did not turn up. I allowed the applicant to proceed in his
15 absence. I allowed the application, set aside the order of the Registrar dated 24th July 2013, and all other orders made subsequent to that and reserved the reasons for the order.

This is a very simple matter resulting from the conduct of counsel who misled Court and Court not taking due care to ascertain both facts and the law ended up making a wrong decision.

The applicant Kiiza Christopher is not party to this Civil Appeal No. 78 of 2011 or High Court
20 Civil Appeal No. 59 of 2011 or the original suit at Nakawa Magistrates' Court Suit No 35 of 2010. Therefore the orders in those matters could not relate to him. The parties in Miscellaneous Application No. 119 and 120 of 2011 in this Court are Kasoma Fred as the applicant and Sembatya James as the respondent. Kiiza Christopher could not have been in contempt of a Court order that was not directed to him and in a matter in which he was not a party.

25 Secondly the Registrar's order was not made in respect of the milk tank. In fact it does not even specify which vehicle or vehicles were subject of the order of stay of execution. This was a fetal omission that rendered the order unenforceable. The Registrar ought to have specified in his order the specific Motor vehicles subject of the order. He did not.

Thirdly the learned Registrar seemed to have taken it for granted that anything attached to a Motor vehicle becomes part of the Motor vehicle. This is not correct. There was no evidence provided by the applicant to prove that indeed the Motor vehicle was a tanker. That is a Lorry that is permanently designed to carry a tank. For example Petroleum tank. The particulars of the vehicle were not provided. If they had been provided the Registrar would have ascertained that the said Motor vehicle was only licenced and registered as a Lorry and not a tanker.

Another example is that a “tractor” (which is the front part of a lorry that contains the engine) usually pulls a trailer. The tractor and the trailer are separate vehicles and are licenced separately. A tractor may pull different trailers at different times. On a trailer they may be fixed thereon a container. But a container cannot be said to be part of the trailer or tractor. It is an error to assume that whatever is carried in a Motor vehicle must be part of that Motor vehicle.

I find that the respondent Mr. Kiiza provided sufficient evidence to prove that he fixed a tank on a lorry and the two were separate. He even provided an agreement in respect of the tank which was disregarded, by the Registrar. It is annexure “D” to his affidavit in reply herein.

The Registrar ought to have taken time to acquaint himself with the law and procedure relating to import, licencing and registration of Motor vehicles. Had he had done so, he would have found that the tank in this case was not part of the Lorry the subject of his Court order. The Registrar’s order as I have stated ought to have specified that it was in respect of the milk tank too. It did not.

I find it difficult to understand how the respondent could have been in contempt of an order that did not relate to the milk tank.

Be that as it may, the Registrar erred when he found that Kiiza Christopher was in contempt of his orders, when in fact he had obtained a lawful Court to order from the High Court Registrar.

The Registrar of the High Court made a very specific order. It was well written and clear. The respondent herein acted in accordance with a valid order of the High Court. He could not therefore have been in contempt.

The correct procedure would have been for the applicant to first set aside the order of the High Court. He did not. Instead he rushed to this Court to have the respondent sent to prison. This Court should never have allowed this to happen.

5 What is even more surprising is that the learned Registrar Erias Kisawuzi directed that this matter be forwarded to the law council for disciplinary proceedings against counsel for the respondent. I don't think there was any basis for such disciplinary action. The learned Registrar with all due respect over stepped his boundaries. I must emphasise that neither the respondent Kiiiza Christopher nor his counsel were in contempt of any Court order and that the order of the High Court was valid and therefore by acting upon it no offence was committed. Citizens of this
10 country are free to seek legal remedies from any Courts of law and when such remedies are granted that cannot amount to an offence.

All in all I allowed this reference for the reasons I have given in this Ruling.

I set aside the order of the Registrar dated 24th June 2012. I now make further orders as follows;-

- 1) *The applicant pays costs to this application.*
- 15 2) *That civil appeal herein be fixed immediately for hearing.*

Dated at Kampala this 20th day of February 2014.

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HON. MR. JUSTICE KENNETH KAKURU