

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 191 OF 2016

JOHNSON MUGISHA

NANKYA REGINA

JOHN BUWEMBO

JAMES MUTUMBA;,,,APPELLANTS

VERSUS

[illegible]

STANBIC BANK (UGANDA) LTD DFCU BANK LTD;GARNISHHES

CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE F.M.S EGONDA NTENDE, JA

HON.MR.JUSTICE SIMON BYABAKAMA MUGENYI, JA

RULING OF THE COURT

This application is brought by notice of motion seeking the following orders

a) The Court of Appeal be pleased on its own motion to give the applicants leave to appeal and /or the applicants be granted consequential extension of time within which to lodge their application for leave to appeal against the decision of Hon. Lady Justice Elizabeth Musoke delivered on the 29th September 2015 ordering the Applicants to refund the monies amounting to Ug. Shs. 1,566,252,698 /= (Uganda Shillings One Billion Five Hundred and Sixty Six Million Two Hundred and Fifty Two Thousand Six Hundred and Ninety Eight) obtained by an Order of Garnishee Absolute issued by His Worship Isaac Muwata The Learned Registrar of the Execution & Bailiffs Division of the High Court in Miscellaneous Application No. 889 of 2012 in order to safeguard their right to appeal notwithstanding that they had first filed in¹The High Court Misc. Application No. 481 of 2015 against the Respondents and Garnishees in The Civil Division of the High Court seeking leave to appeal against the decision of Hon. Lady Justice Elizabeth

Musoke and the same was dismissed in a Ruling delivered by His Lordship Stephen Musota on the 22nd June 2016.

b) *The Applicants be granted leave to appeal against the Ruling of Hon. Lady Justice Elizabeth Musoke delivered on the 29th September 2015 ordering the Applicants to refund the monies amounting to Ug. shs. 1,566,252,698/= (Uganda Shillings One Billion Five Hundred and Sixty Six Million Two Hundred and Fifty Two Thousand Six Hundred and Ninety Eight) obtained by an Order of Garnishee Absolute issued by His Worship Isaac Muwata The Learned Registrar of the Execution & Bailiffs Division of the High Court in Miscellaneous Application No. 889 of 20 12.*

c) *Costs to this application be in the Main Cause.*

It is supported by an affidavit deposed to by one Nankya Regina the 2nd applicant. The affidavit is very lengthy and argumentative and we cannot reproduce it here. We shall refer to the relevant parts in the due course. When the application came up for hearing **Mr. Justin Semuyaba** together with **Mr. Andrew Bwengye** appeared for the applicants. The 1st respondent was represented by **Mr. Denis Byaruhanga** while the 2nd respondent was represented by **Mr. Ferdinand Musiimenta**. No one appeared for the 3rd respondent. Since there was evidence on record that the 3rd respondent had been duly served with the motion we allowed the applicant to proceed in the absence of 3rd respondent.

Mr. Semuyaba submitted that the applicants were on 29th September 2015 ordered to refund shs. 1,566,252,698 being money paid to the applicants under a garnishee order issued by the Registrar of the High Court in *Miscellaneous Application No. 889 of 2012*.

Counsel submitted that the applicants were aggrieved by the said order and had sought leave to appeal as the order was not appealable as of right. Hon. Justice Stephen Musota, J who heard that application declined to grant the order hence this application which is brought under *Rule 42(1), (2)* of the Rules of this Court seeking leave of this Court to appeal.

In her detailed Ruling dated 29th September 2015 against which the applicant now seeks leave of this court to appeal Justice Elizabeth Musoke J (as she then was) held as follows at page 16-17 of her Judgment:-

“Under ordinary circumstances I would not hesitate to hold that the appellant had no locus to lodge this appeal because it was not party to the garnishee proceedings. I have however, taken into consideration the fact that the garnishee proceedings were commenced without a proper judgment, decree or order of court.

The appeal is not only in respect of the appellant having not been heard in the garnishee proceedings. A serious matter of illegality has been brought to the courts attention whereby the Registrar proceeded to issue orders Nisi and absolute in a matter where there was no judgment or decree to base himself on. Once an illegality has been brought to court's attention, it cannot be overlooked. (See Makula International Ltd (Supra). It cannot be said to be a technicality referred to as under Article 126(2) (e) of the Constitution of the Republic of Uganda.

This court is duty bound to protect the sanctity of court actions. The garnishee proceedings were an illegality abinitio.

On grounds of illegality, I would set aside the execution/garnishee proceedings and orders there from; and I order for the refund of the monies illegally obtained thereby. The appellant shall take steps for such recovery

It was submitted here by Mr. Semuyaba for the applicants that the garnishee order *Nisi* and *garnishee order absolute* were both issued following a decree of this Court in *Civil Application No. 33 of 2006* arising from *Civil appeal No. 18 of 2006*. He contended that, in that case this court exercising the power of the trial court under *Section 11 of the Judicature Act (Cap 13)* issued a decree in which the 1st respondent was to pay to the applicants their terminal benefits.

We have perused the Ruling in the said *Court of Appeal: Civil Application No 33 of 2006*, the applicants in that matter were the same in this one. The respondent in that application was Kampala Capital City (KCC) the predecessor to Kampala Capital City Authority (KCCA).

In that application the applicants sought the following orders;-

- 1) The settlement agreement and release entered into and filed in Court by counsel for the respective parties be set aside.***
- 2) Civil Appeal No. 18/06 which the counsel sought to compromise be reinstated on the cause list for hearing and final disposal.***

3) Provision be made as to the costs of the application.

The grounds of the application were set out in the Notice of motion as follows

- 1) The settlement / agreement and release was executed and filed in court by counsel without the knowledge and consent of the applicants, the interested parties.**
- 2) The agreement and release was registered in court by counsel fraudulently in that it was negotiated without physical participation of the applicants.**
- 3) The settlement did not incorporate fully the entitlements of the applicants as stipulated in their retrenchment letter.**
- 4) It is fair and in the interest of justice that the said settlement be set aside and the appeal to be heard and disposed of on merit.**

Learned Justice of appeal concluded their ruling at page 12-13 as follows

“Consequently we are constrained to find that there was no decree and therefore there was no proper appeal before this court which learned counsel for the applicants is inviting us to hear and determine on merit.

The second aspect of the confusion in the case was the Uganda Public Employees Union Agreement. The agreement in clause 4 therefore provided for terminal benefits for former and future employees of the respondent. This means that the applicants as former employees might have been beneficiaries of this clause. However, they did not amend their plaint

which had been filed in 1995 to bring the agreement on board. It must have surfaced as the learned trial Judge was trying to settle the case but the record of the proceedings does not indicate how it was introduced. The fact remains that it was not exhibited and ought not to have been a basis for any settlement unless both parties agreed to it something that was not done. In cases where parties consent to settle or compromise a dispute, the court has to endorse the settlement and pronounce itself on the matter.

We have given anxious consideration to this old dispute. The documents available to us and the annexures attached to Mr. Sempa-Mutyaba’s affidavit indicate that

most of the applicants including the first applicant have been paid their terminal benefits. In case there are retrenches who have not yet been paid, the formula that the respondent used to pay those it paid can be used to pay any of the remaining retrenches who have not been paid. In the circumstances of this case we do not consider it wise to remit the file back to High Court for trial.

In the result this application ought to fail with no order as to costs.

It is from this Judgment that the applicants and their counsel extracted 'a decree' upon which the *garnishee* orders were issued by the Registrar of the High Court and upon which the applicants were paid Shs. 1,566,256,698/= the amount Justice Musoke J (as she then was) ordered them to refund.

In order for an application such as this one before us to succeed, the applicant must show to the satisfaction of the Court that the intended appeal has likelihood of success. From what we have set out above, we are not satisfied that the intended appeal has any likelihood of success. Court of appeal *Miscellaneous Application No. 33 of 2006* was dismissed and as such no positive order could have been extracted therefrom to form a basis of any claim against the 1st respondent. There was no decree from which *garnishee* orders could result what Mr. Semuyaba refers to as 'a decree' from which the *garnishee* orders were issued was certainly a forgery or a misrepresentation. This court cannot sanction illegal and fraudulent transaction perpetuated by the applicants and their counsel.

We agree with the decision of Justice Musoke J (as she then was) that the *garnishee* proceedings were an nullity and the resultant order was void *ab initio*. The money obtained by the applicant resulting from the said proceedings must be returned by the applicants and for those who have since deceased by their estates. The respondents are at liberty to recover the said money through court process.

The Registrar of this court is hereby directed to serve a copy of this ruling and that of Justice E. Musoke referred to above upon the Director of Public Prosecutions and the Secretary to the Law Council for them to ascertain whether or not the applicants and their counsel criminally culpable for the matters raised herein. Needless to say, we find no merit whatsoever in this application which is hereby dismissed with costs to the respondents.

JUSTICE OF APPEAL

HON.F.M.S EGONDA NTENDE

JUSTICE OF APPEAL

HON.SIMON BYABAKAMA MUGENYI

JUSTICE OF APPEAL