

**THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL REFERENCE NO 25 OF 2020
(ARISING OUT OF CIVIL APPLICATION NO. 183 OF 2019)
(ALL ARISING OUT OF CIVIL APPEAL NO 230 OF 2015)
(REFERENCE from the decision of a Single Justice Hon. Justice Remmy
K. Kasule)**

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

UGANDA TELECOM LTD (IN ADMINISTRATION)APPLICANT

VERSUS

1. BERNARD MWETEISE}

2. ASAPH NDAULA & OTHERS}RESPONDENTS

JUDGMENT OF COURT

This reference arises from Civil Application No 183 of 2019 before Justice Remmy Kasule, JA wherein he granted a garnishee order nisi. The applicant was aggrieved and filed this reference to this court under Rule 55 (1) (b) of the Rules of this court for an order to set aside the garnishee order nisi.

At the hearing of the reference learned Counsel Mr Peter Allan Musoke appearing jointly with learned counsel Mr Wandembere Nulu appeared for the applicants while the learned Senior Counsel Mr. John Matovu appearing together with the learned Counsel Mr John Mary Kiwuwa represented the respondents.

We heard arguments from both sides. The court was addressed on whether the reference was competent because it did not arise from an interlocutory

order of a single judge. Further, we were addressed on whether the single Justice of the Court of Appeal had jurisdiction to entertain an enforcement application for a *garnishee order nisi*. Several other important matters of procedure were raised in the proceedings. This included the question of whether *garnishee* proceedings can be taken in the Court of Appeal and if so before whom? Secondly, whether garnishee proceedings could be taken at all since the applicant was under Administration and execution proceedings could only take place with the leave of the High Court under the Insolvency Act and not the Court of Appeal. We reserved our decision on notice.

We noted that the same matter is coming before the Single Justice on 11th March, 2020 while this application was heard on 5th March, 2020. If a decision is not rendered before 11th March, 2020, the application could be rendered nugatory. At the same time we have considered the fact that important matters affecting the procedure of the court have been raised.

We shall preliminarily deal with the question of jurisdiction. In the High Court, the procedure for attachment of debts (*garnishee proceedings*) is governed by Order 23 of the Civil Procedure Rules. The judgment creditor commences proceedings under Order 23 rule 1 of the Civil Procedure Rules upon an ex parte application of the decree holder and either before or after oral examination of the judgment debtor whereupon where the judge is satisfied that there is a judgment debt that is still unsatisfied and owing or accruing from a third person called the garnishee to the judgment debtor, a garnishee order nisi may be issue. The order states that debt owing to the judgment debtor be attached to answer the decree together with the costs of the proceedings whereupon the garnishee shall appear before the court to show cause why he or she should not pay the decree holder the debt that is owed by the garnishee to the judgment debtor. The *garnishee order nisi* is served on the *garnishee* who, in turn, is entitled to be heard on the

question of whether the order nisi should be made absolute thereby transferring the money owed to the judgment debtor to the judgment creditor. Under section 38 (c) of the Civil Procedure Act, a court executing the decree may order the execution of the decree by attachment of debts. Ordinarily, such an application is made to the registrar of the court executing the decree or to the magistrate court which issued the decree or a court to whom the decree has been sent for execution.

In the matter before us, when the application was put before a single Justice of the Court of Appeal and the *garnishee order nisi* issued, the question *inter alia* to be determined is whether a single Justice of the Court of Appeal has jurisdiction to entertain the application. The applicant's counsel submitted that a single Justice of the Court of Appeal had no jurisdiction to hear an application for the issuance of a garnishee order nisi or absolute. Learned counsel for the respondent conceded that the single Justice of the Court of Appeal had no jurisdiction and therefore the reference was a nullity. He submitted that he had filed the matter for handling by a Registrar.

We have carefully considered section 12 of the Judicature Act which provides as follows:

12. Powers of a single justice of the Court of Appeal.

(1) A single justice of the Court of Appeal may exercise any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal.

(2) Any person dissatisfied with the decision of a single justice of the Court of Appeal in the exercise of any power under subsection (1) shall be entitled to have the matter determined by a bench of three justices of the Court of Appeal which may confirm, vary or reverse the decision.

The jurisdiction of a single justice under section 12 (1) of the Judicature Act is limited to the exercise of any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal. Similarly, section

12 (2) of the Judicature Act, which gives an aggrieved party, aggrieved by a decision of a single justice, a right to refer the matter to a bench of three justices of the Court of Appeal. It follows that a reference can only be validly preferred where a single justice exercises the jurisdiction vested in him or her by section 12 (1) of the Judicature Act only. The Jurisdiction of a single justice is not inherent as it is narrowly prescribed by Parliament otherwise the Constitution of the Republic of Uganda provides that the Court of Appeal shall be duly constituted where it is constituted by an uneven number of justices not being less than three members of the court. A single justice only exercises special jurisdiction in interlocutory matters where the main cause is pending before the court which shall be constituted by an uneven number of not less than three justices of appeal.

In the circumstances of this reference, the Court of Appeal had determined Civil Appeal No 230 of 2015 and had *inter alia* affirmed the decree of the High Court. There was no matter pending before the Court of Appeal with regard to the decree of the Court and the matter is not for further appeal in the Supreme Court. The powers of a single Justice of the Court of Appeal can only be exercised in interlocutory causes before the Court of Appeal. Similarly, a reference arises from the decision of a single judge in an interlocutory cause while the main case is pending before the Court of Appeal.

Rule 55 (1) (b) of the Judicature (Court of Appeal Rules) Directions which governs references from decisions of single justice to the full bench only applies where a single justice exercises his or her limited jurisdiction in an interlocutory cause of matter pending before the Court of Appeal. In the premises, both the application before the single justice for attachment of debts as well as the reference arising from the garnishee order nisi are incompetent and the orders issued thereunder are a nullity for want of jurisdiction.

We accordingly strike out the reference before this court and exercise our powers under Rule 2 (2) of the Rules of this court and set aside the garnishee order nisi, issued by the single justice dated 5th February, 2020 and direct that no further proceedings shall be taken before the single Justice in the matter.

Before we take leave of this matter, we need to state that enforcement proceedings had been commenced in the High Court by the decree holder in Civil Appeal No. 230 of 2015. Since the judgment debtor had been placed under liquidation at the time this court rendered judgment in the above appeal, the decree holder was required under section 119 (2) (c) of the Insolvency Act, Act 14 of 2011 to seek leave of the High Court to take execution proceedings against the property of the judgment debtor. Further, section 119 (2) (c) (ii) bars other proceedings in court save for application for leave in the High Court. The barred applications include execution proceedings or other legal process from being commenced against the debtor or his or her property when the debtor is under administration.

The facts are that the respondents did seek leave of the High Court in Miscellaneous Application No. 801 of 2018 and leave was denied. The decree holder/judgment creditor lodged a notice of appeal against the refusal. Thereafter the judgment creditor again filed a fresh application for attachment of debts in the Court of Appeal and it was heard by a single judge.

It was therefore irregular for the applicant to file and for the court to entertain execution proceedings by way of attachment of debts without leave of the High Court or without the appeal against refusal of the High Court to grant leave under the Insolvency Act, first having been heard and determined by this court. We make no order as to costs.

Dated at Kampala the th10 day of March 2020



Kenneth Kakuru

Justice of Appeal



Geoffrey Kiryabwire

Justice of Appeal



Christopher Madrama

Justice of Appeal

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not no
single