

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT MENGO AT MENGO
MISC. APPLICATION NO. 424 OF 1999
ARISING FROM MISC. APPLICATION NO. 223 OF 1999.
IN THE MATTER OF DISTRESS FOR RENT (BAILIFF'S) ACT CAP 68
NOW CONSOLIDATED IN H.C.C.S. NO. 1291 OF 1999
AND
IN THE MATTER OF

1. M/S ASSIST (U) LTD.....APPLICANT
AND
2. M/S ITALIAN ASHPHALT HAULAGE LTD]
3. TITO .O. TWISUKYE P/A M/S TRUST].....RESPONDENT
MATTERS AGENCIES]

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

INTERIM RULING

This is an old matter that had gone into back log arising out of a dispute for the non payment of rent which ultimately led to the levy of distress for rent on or about the 3rd September 1999.

What followed was the advertising by the 2nd Respondent of the property so distressed for sale in the New papers to wit the Monitor News paper of the 8th September, 1999 to take place on the 22nd September 1999 at 10.00a.m.

The applicant through M.A 424 of 1999 obtained an Interim Order dated 15th September 1999 from His Worship Muse Musimbi Chief Magistrate staying the Sale of the distressed property until "further orders of court or the disposal of the application".

M.A. 424 of 1999 was an application by way of notice of motion to have the Certificate of Distress dated 3rd September 1999 cancelled/lifted and or revoked and the properties distrained released.

The proceedings in M.A 424 of 1999 led to an appeal to the High Court in Civil Appeal No. 9 of 2000. During that appeal another M.A No. 757 of 2001 to widen the grounds of appeal was filed (which was granted). Be that as it may the appeal in Civil Appeal No. 9 of 2000 by the current Respondents was dismissed on the 27th March 2002 by the Hon. Justice E.S. Lugayizi who ordered M.A. 424 of 1999 still before the Chief Magistrate to continue.

While all this was taking place H.C.C.S 1291 of 1999 based on facts arising out the same dispute and parties was filed in the High Court. The High Court case was first placed before the Hon. Lady Justice C.K Byamugisha but despite several mentions the actual hearing did not take off for several reasons which I shall not go into. The High Court file was then placed before the Hon. Justice J. Ogoola in September 2002.

By this time there was a multiplicity of legal actions in the High Court, the Magistrates Court and before the High Court Registrar. This ultimately led to the Hon. Justice Ogoola on the 13th February 2003 after both parties consented consolidated all outstanding actions under this suit H.C.C.S 1291 of 1999.

On the 25th April, 2003 the Hon. Justice J. Ogoola directed that written submissions be made in order to dispose of the Mengo Court Application before he handled the High Court Civil Suit. The submissions were accordingly written.

The file was then re-allocated to me vide a note on the file dated 25th September 2003 by the Hon. Justice Ogoola (who is also Head of the Commercial Division of High Court).

This is how I came to hear it on the 7th November 2003. During mention/hearing, after counsel for the parties did not object to my taking over the matter, I reluctantly agreed to handle the case. I agreed to address the written submissions made regarding the matter in the Magistrates Court and give my ruling on notice.

I have since had an opportunity to more deeply study the now consolidated dispute, which is in 5 files and 3 large bundles. It is for this reason that I earlier in my ruling decided to restate the history of this suit, clearly this matter has stayed too long in the courts without addressing the substantive issues of the rent dispute. This is because the substantive dispute has been burdened with multiplicity of miscellaneous applications and preliminary objections. This can be seen from the manner in which the miscellaneous applications have been handled with both counsel also trying to address the substantive issues of the dispute before the formal hearing.

Indeed the Hon. Justice Lugayizi in Civil Appeal No. 9 of 2000 observed.

"...before court takes leave of this matter it wishes to point out that it was Imprudent for the appellants' Advocates to advise the appellants to appeal to this honourable court after merely losing some preliminary objections. After the learned Chief Magistrates ruling the better course should have been for the parties to proceed with the substance of the notice of motion and finally appeal once on all matters if any if the parties was dissatisfied with the out come of the notice of motion.... they will now realise that they have to go back to the lower court to finish what they left unfinished. This is not only going to be very expensive for them financially

but they will discover, too, that it is a round about way of finally disposing of the notice of motion.."

In this new Judicial era of case management, a Judicial Officer is supposed to manage the cases that come before him or her in the shortest and most cost effective manner while at the same to time where possible, promoting reconciliation. Cases should also be managed in such a manner as to achieve substantive Justice. These principles are further enshrined in Article 126(2) of Uganda Constitution 1995.

Having reviewed the history of this particular dispute especially the time it has taken without actual resolution, now leading to the current consolidated suit, I find it would be imprudent of me to continue handling it in a piece meal manner.

I therefore rule that in the interest of justice the following take place: -

1. That the main suit in H.C.C.S 1291 be heard forthwith.
2. Now that all outstanding actions have been consolidated into one suit, the issues for disposal in Mengo Court M.A. 424 of 1999 for which written submissions have been done do form some of the issues within this consolidated suite. My ruling on those issues is accordingly further reserved to be given with the Judgement finally determining the consolidate suit.
3. That the parties prepare for a scheduling conference on a date of be agreed on with court to determine the expeditious manner by which this consolidated suit can be disposed of.

The Interim order of the Chief Magistrate dated 15th September 1999 staying the Sale of the distrained property is further extended until the disposal of the consolidated suit.

Sgd.

Geoffrey Kiryabwire

Ag. Judge.

Court Ruling delivered this 19th day of December 2003

Parties.

1. For the Applicant. Mr. J. M. Mugisha
2. For the Respondent. Mr. B. Ssebuliba holding brief for brief for Mr. Alan Shonubi.

Sgd.

Geoffrey Kiryabwire

Ag. Judge.

19th December 2003

19th December 2003

12.30 p.m.

Mr. J. M. Mugisha for Applicant.

Mr. Ssebuliba for Respondent holding brief for Mr. A. Shounbi.

Mrs. R. Emeru C/Clerk.

Mr. J. M. Mugisha

We propose the 22nd January 2004 for Scheduling.

Mr. Sseuliba

That is correct.

Court

This matter is adjourned to the 22nd January 2004 for scheduling.

Sgd.

Geoffrey Kiryabwire

Ag. Judge.

19th December 2003