

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-MA-0490 OF 2005**  
**(Arising out of HCT-00-CC-CS-1091 of 1997)**

**NDAWULA O.M.J**  
**APPLICANT**

.....

**VERSUS**

**AKWATA EMPOLA BAKERY LTD**  
**RESPONDENT**

.....

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU**  
**BAMWINE**

**R U L I N G :**

This is an application for an order releasing the Applicant's M/V No. 373 UAA from attachment made by the learned Registrar of this Court. The ground is basically one: That the M/V belongs to the Applicant and not Guweddeko, the Judgment Debtor.

I have very carefully addressed my mind to the arguments of both counsel. It would appear that the Applicant and the Judgment Debtor are workmates at Makerere University. It would also appear that the Applicant was in the habit of lending his car to the Judgment Debtor. On 17/6/2005, the vehicle in

question was attached on order of Court. The Applicant has produced documents of ownership. However, as Mr. Kibeedi has correctly stated, the issue here is not ownership but possession.

According to the affidavit of the Bailiff, the vehicle was not at the time of the attachment in the possession of the Judgment Debtor. He had tracked it for about 2 months and on all relevant occasions, he was seeing Guweddeko driving it. He does not say why he never made attempts to attach it at the time the Judgment Debtor was in actual possession of it. Nevertheless, on 17/6/2005 he, the Bailiff, found it parked. He waited for the Judgment Debtor to come out of his office and when he did, since he had seen him driving it prior to all this, he attached it and made him (the Judgment Debtor) to drive it to Wandegeya Police Station. It is not indicated how the engine was started or whether the Judgment Debtor had the ignition key in his possession.

Be that as it may, the Judgment Debtor told the Bailiff that the vehicle was not his, that it was Ndawula's. The documents of ownership availed to Court indicate so.

In these circumstances, it would be unfair to order that the vehicle be sold for purposes of settling Guweddeko's debts when he may merely have been borrowing it from the owner, the Applicant. For the reason above, I allow the application. I order that the M/V be released from attachment. I further

order that the Shs.600,000- which the Judgment Debtor had deposited in Court be released to him for onward payment to the Judgment Creditor. This will be in addition to the Shs.350,000- which the Judgment Debtor has already passed on to the Judgment Creditor's lawyers.

The Judgment Debtor is given 30 days within which to settle the balance or else the application for execution be renewed in respect of the balance.

As regards costs, since the vehicle was handed over to the Bailiff by the Judgment Debtor, the Applicant shall be at liberty to seek redress against him (Judgment Debtor) and not the Judgment Creditor who at the face of the record had reason to cause the attachment of the vehicle in question. Accordingly, I would order that each party bears its own costs and I do so.

The Applicant shall have his documents of ownership returned to him. I order so.

Yorokamu Bamwine

**J U D G E**

28/9/2005