

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0509-2006

(Arising from HCT-00-CC-CS-0389-2006)

KAMPALA INTERNATIONAL UNIVERSITY

PLAINTIFF/APPLICANT

Versus

STEEL ROLLING MILLS LTD

DEFENDANT

AND

UGANDA REVENUE AUTHORITY

GARNISHEE

AND

ATTORNEY GENERAL

THIRD PARTY

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The plaintiff brought this action to recover from the defendant Shs8,269,553,502.00, damages, interest and costs of the suit. The plaintiff contended in the plaint that it had ordered assorted steel from the defendant for the sum of US\$29,033,900.00. The plaintiff contended that it had deposited monies on the defendants account for the steel and even paid Shs. 8,269,553,502.00 being the vat component to the defendant's tax benefit.
2. The plaintiff further contended in its plaint that the defendant supplied only a token quantity of steel and it refused to supply the quantity contracted despite its holding unspecified sums of money on its deposit account and Shs.8,269,553,502.00 on its tax account. In light of the defendant's refusal or failure to supply the steel, the plaintiff contended it had suffered damage and therefore brought this action to recover from the defendant the sum of Shs.8,269,553,502.00, damages, interest and costs of the suit.

3. The defendant, in response to the plaintiff's claim, claimed that the performance of this contract, was frustrated by the actions of the Uganda Revenue Authority, which had directed the defendant, not to continue with the supplies of steel to the plaintiff. The defendant further stated, in part in paragraph 3 thereof,

‘(e) The defendant as the taxable person for the taxable supply of steel to the Plaintiff under the contract which is the subject of this suit acknowledges only Ushs.8,255,126,042.00 and not Ushs.8,269,553,502.00. as the balance due on pre-paid VAT by the plaintiff which is held on the defendants VAT account with the Uganda Revenue Authority.

(f) The Defendant denies liability or at all for the failure to honour the supply of the steel to the Plaintiff as to the knowledge of the Plaintiff, the contract was frustrated by URA's administrative directives not to supply which functionally disabled the Defendant's capacity to perform.’

4. The plaintiff on the basis of this written statement of defence wrote to the Registrar of this court, on 13 July 2006, stating in part,

‘The Defendant filed and served us with a written statement of defence substantially admitting the Plaintiff's claim in the amount of Ushs.8,255,126,042/= as paragraph 3(e) thereof can refer. We therefore pray for judgment to be entered upon the said admitted sum as pleaded by the Defendant under O.11 r.6 CPR (as amended).’

5. The Registrar proceeded to enter judgement as requested and a formal decree was extracted on the 13 July 2006.
6. The plaintiff, now judgment debtor, without delay, on the 14 July 2006 applied for attachment of this sum of Shs.8,255,126,042.00 held by Uganda Revenue Authority on the judgment debtor's VAT account with that organisation. The Registrar of this court, issued an order for attachment of the said sum against Uganda Revenue Authority. The order of attachment is dated 7th July 2006, which I presume must be a mistake, as of that date no judgment had been entered in this case. He ordered Uganda Revenue Authority to appear before him on the 21st July 2006, on a hearing of the said application.
7. Uganda Revenue Authority responded with an affidavit sworn by Ms Jacqueline Kobusingye, the Commissioner for Domestic Taxes in Uganda Revenue Authority. I shall set out, in part, portions of her affidavit.

‘3. That on or about the 30th August 2005, the applicant requested the Government of Uganda for assistance to pay taxes on

construction materials for its University Teaching Hospital at Ishaka in Bushenyi. 4. That the request for assistance was in respect of Value Added Tax on cement, iron bars, and science equipment. 5. That by the letter dated 11th October 2005, the request was granted. Copy of the letter is hereto annexed as “A”. 6. That on 30th November 2005, the Government of Uganda paid to the garnishee VAT of U.Shs.8,269,553,502 in respect of the iron bars to be supplied by Steel Rolling Mills to the Applicant. 7. That the payment was held on a Gross Payment Account, in favour of Kampala International University and the Garnishee would only off-set and pay itself VAT on receiving evidence of any supplies made by Steel Rolling Mills. 8. That the above arrangement was agreed between the applicant, the Respondent and the Garnishee as confirmed in the minutes of a meeting held on the 27/02/06 a copy of which is herewith annexed as “B” hereto. 9. That the respondent has to date made supplies of U.shs.146,257,356/= and the garnishee has off-set and paid itself U.shs.26,326,324/= from the Gross Payment Account. 10. That the balance of U.shs.8,255,126,042/= on the Gross payment Account is money held in trust by the Garnishee on behalf of the Government of Uganda, and only accrues to the Garnishee as VAT component of any supplies made by the respondent to the Applicant. 11. That the amount of U.shs.8,255,126,042/= on the Gross Payment Account is not a debt owed to the respondent, nor a debt accruing to it, but money held on behalf of the Government of Uganda, administered by the Garnishee to ensure that VAT payment is honoured.’

8. The applicant responded with an affidavit in rejoinder sworn by Deo Betungura, the Vice Chancellor of the applicant which in effect says the sum in contention was an unrefundable contribution by government to the applicant to construct a teaching hospital. After the frustration of the contract to supply steel to the applicant, the affidavit contends that this money is now due to the judgment debtor as the taxable entity and that the money is not held in trust for government.
9. The Registrar of this court then summoned the Attorney General to come and make his claim to the money in question, in accordance with Order 23 Rule 5 of the Civil Procedure Rules. The Attorney General responded and filed an affidavit in reply. The Judgment Creditor, the garnishee, and the Attorney General appeared before the Registrar on the claim by the Attorney General. After hearing the Attorney General and framing the

issues, the registrar decided to refer this matter to me, considering the magnitude of the subject matter and the complexity of the issues raised.

10. I ordered the parties to appear before me on 23 August 2006, and on that date, proceeded with the hearing of the third party claim filed by the Attorney General and now proceed to give my decision.

11. In support of the position of the third party, an affidavit sworn by Mr. Lawrence Kiiza was filed. Mr. Kiiza is the Acting Director, Economic Affairs in the Ministry of Finance, Planning and Economic Development. He recited the background to the payment to Uganda Revenue Authority of the money in question. And he then went further to state, in part,

‘5. That the Ministry of Finance, Planning and Economic Development issued a tax cheque to Uganda Revenue Authority of Ug.Shs.8,269,533,502/= towards payment of Value Added Tax (VAT) on 35,000 tons of iron bars marked Annexure “A”.

6. That the said cheque was not a direct cash benefit to Kampala International University but a document specifically as evidence of Government payment of taxes. 7. That in all payments of taxes by Government on behalf of private enterprises are not cash payments which can be transferred to a person but are meant to be banked only in the Consolidated Tax Account.

8. That the Uganda Revenue Authority (URA) issued an assessment of Ug.Shs.8,269,553,502/= towards payment of VAT on 35,000 tons of iron bars which was the paid at Bank of Uganda by Ministry of Finance, Planning and Economic Development on 30/11/2005, and Uganda Revenue Authority was advised of the same vide Bank of Uganda T111 No. 002328 of 30/11/2005, and cheque attached hereto and marked as Annexure “B”.

9. that I know that on the same date 30/11/2005 the aforementioned sum of money Shs.8,269,553,502/= was credited on the Uganda Revenue Account and on 02/12/2005 transferred. Attached is a copy of the transfers marked Annexure “C”.

10 That I know that on the 02/12/2005, the said amount was transferred to the Uganda Consolidated Fund, Government Tax Account.’

12. Mr. Kavuma Kabenge, learned counsel for the applicant/judgment creditor, if I can correctly summarise his position, argued before me that neither the applicant nor Government of Uganda were a taxable entity for purposes of VAT. The only taxable entity under VAT was the judgment debtor, and it followed that any unused funds for tax purposes are now a debt due to the judgment debtor, which is attachable.

13. Ms Angela Kiryabwire, learned Principal State Attorney, appearing for the Attorney General, argued that the transaction in question was essentially a paper transaction, created to support the tax exemption on the steel that was supposed to have been supplied to the Judgment creditor by the judgment debtor. There is no money available with Uganda Revenue Authority that can be attached as debt.
14. I have carefully considered all the affidavits filed both in support of the attachment for the applicant, and against attachment for the third party and garnishee. I have also taken into account the submissions of counsel in this matter. The facts are very simple.
15. It has clearly been established that the Government paid the vat component of steel supplies to be made to the applicant. Government paid this money to the revenue collection agency, the garnishee in these proceedings. This money was not paid to either the judgment creditor or the judgment debtor. It appears common cause between the two, the judgment creditor and judgment debtor, that this contract is now frustrated. The consequences of the frustration are not in issue here.
16. What is in issue here is whether the pre paid unused VAT payment is held as a debt to the judgment debtor, as contended by the judgment creditor, or not. The judgment debtor is not party to these proceedings. It has not claimed that it has VAT refunds due to it from the Uganda Revenue Authority, and even if it had so claimed, this is not to the knowledge of this court, in these proceedings. I am doubtful that a VAT refund claim, if there was such a claim due, would amount to an attachable debt without being processed under the procedures set out in the Valued Added Tax Act. That is a matter I do not have to decide in these proceedings.
17. I am unable to see, on the facts put forth, what sums of money, if any, Uganda Revenue Authority holds for the benefit of the judgment debtor. The funds pointed to, and now sought to be attached, were paid, by Government of Uganda, and not the taxable entity, the judgment debtor in this case, to Uganda Revenue Authority, as pre payment of taxes, for the benefit of the judgment creditor, for onward transmission to the Consolidated Fund. It is, of course, here immaterial that the payment was for the benefit of the judgment creditor.
18. The judgment debtor has made no claim on Uganda Revenue Authority, or on any of the monies that Uganda Revenue Authority received. It is simply preposterous for the

judgment creditor to purport to attach a non-existent debt between the judgment debtor and the garnishee. The consequences of the frustration of the contract between the judgment creditor and the judgment debtor, which on the face of it, now include this judgment debt, cannot be sorted out by execution proceedings of this nature, which amount to no more than an illegal raid on the consolidated fund.

19. The Uganda Revenue Authority is obliged by Section 14 of the Uganda Revenue Authority Act, to place all revenue it collects or that is due and payable, on the Consolidated Fund. What ever money Uganda Revenue Authority receives on account of taxes is held in trust for the Government of Uganda. It is the Government of Uganda that is the party that has a claim on the funds sought to be attached in this case, on two accounts.
20. Firstly, if it is tax revenue, then, the funds in question, without question, belong to the Government of Uganda by law. If on the other hand, the funds in question are not considered revenue, as the goods were not supplied, the Government of Uganda, which was the payee, and has always been the owner thereof, has a lien, or charge on the same, until otherwise established. That explains why the Government of Uganda did not pay this money to the Judgment Creditor or the Judgment debtor in the first place.
21. I am satisfied that the claim of the Government of Uganda on the funds in question has been amply established. I declare that the said funds are not liable to attachment. I set aside the order of attachment issued by the Registrar in this case.
22. In light of the foregoing decisions, I dismiss the application by the judgment creditor to attach the funds in question, with costs, to both Uganda Revenue Authority and the Attorney General.

Signed, dated and delivered at Kampala this 30th day of August 2006

FMS Egonda-Ntende
Judge