THE REPUBLIC OF UGANDA

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

HCT-00-CC-MA-0426 OF 2006
(ARISING FROM HCT-00-CC-CS-0662 of 2005)

ALLEN NSUBUGA NTANANGA ……..…… APPLICANT

VERSUS

UGANDA MICRO FINANCE LTD)
KIMBUGWE JEMBA JACKSON)
SEGAWA RONALD GYAGENDA) ……..……RESPONDENTS
RONA INVESTMENTS UGANDA LTD)
THE REGISTRAR OF TITLES)

BEFORE: HON. JUSTICE LAMECK N. MUKASA

RULING NO: 2

These objector proceedings were brought by Notice of Motion under Order 22 rule 55 – 57 and Order 52 rules 1 – 3 of the Civil Procedure Rules for orders that:-

1. the land and development comprised in Kyadondo Block 232 Plot 1306 land at Kireka – Banda registered in the names of the applicant be released from attachment.
2. the costs of this application be provided for,

And various other orders. In my ruling on the preliminary objection raised in this application I held that matters to do with ownership or title, fraud and illegibility were immaterial at this stage. Therefore in this ruling I will deal with only the application as it related to the objector proceedings.

In support to her application the applicant, Allen Nsubuga Ntananga, filed four affidavits. An affidavit in support sworn by Emmanuel Ntananga dated 8th September 2006, an affidavit in support sworn by the applicant dated 21st September 2006, an affidavit in rejoinder sworn by the applicant on 11th October 2006 and an affidavit in rejoinder to the 4th Respondent's affidavit in reply sworn by Emmanuel Ntananga dated 10th November 2006. She was represented by Mr. Charles Mbogo.

The 1st respondent, Uganda Micro Finance Ltd, filed four affidavits all deponed to by Atingu Stella, a legal assistant in M/S Kasozi, Omongole & Co Advocates, the law firm representing the 1st Respondent. It was represented by Mr. Joseph Kasozi. The 2nd Respondent, Kimbugwe Jemba Jackson filed two affidavits and was represented by Mr. Kanyunyuzi. The 3rd Respondent Segawa Ronald Gyagenda filed one affidavit and was represented by Mr. Kawesa. The 4th Respondent, M/S Rona Investments (U) Ltd filed one affidavit sworn by Semakula Mukiibi and was represented by Mr. Patrick Furah. The 5th Respondent the Registrar of Titles, was added by order of this Honourable Court, did not file any affidavit and was not represented at the hearing.

The background to this application is briefly that on 13th October, 2005 M/S Uganda Micro Finance Ltd, the 1st Respondent filed Civil Suit No 662,of 2005 under Summary Procedure against the 2nd Respondent, Kimbugwe Jemba Jackson, seeking to recover repayment of shs12,865,900/= being the total outstanding loan balance on a loan advanced to the 2nd Respondent by the 1st Respondent interest of 4% per month as per the loan agreement and costs of the suit. On 11th January 2006, the 2nd Respondent having failed to seek Courts leave to defend the suit, judgment and decree was entered in favour of the 1st Respondent as prayed. On 20th March 2006 a warrant of attachment and sale of property returnable by 20th April 2006 issued to Nyiro Joseph Erisa in execution of the said judgment to sale the land comprised in plot 1306, Block 232 land at Kireka was renewed. A return filed on 6th April 2006 by M/s Task

Associates indicates that on 30th March 2006 at a Public Auction the property was sold to Segawa Ronald Gyagenda, the 3rd Respondent, being the highest bidder at Shs60,000,000/=.

On 15th June 2006 the applicant filed this application seeking, inter alia, for an order releasing the said property from attachment.

The 3rd Respondent, and judgment Debtor in Civil Suit 662 of 2005, Mr. Kimbugwe Jemba Jackson, did not oppose this application. There was no response from the 5th Respondent, the Registrar of Titles, since he had no representation at the hearing. The 1st, 3rd and 4th Respondents opposed the application. Their respective Counsel filed a joint written submission substantiated at the hearing on behalf of all the three by Mr. Joseph Kasozi.

The 1st, 3rd and 4th, Respondents argued that the property was already out of the operation of the provisions of Order 22 rule 55 of the Civil Procedure Rules. The rule provides:-

> "Where any claim is preferred to, or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objectors, and in all other respects, as if he was party to the suit.
>
> Provided that no such investigations shall be made where the court considers that the claim or objection was designedly delayed.
>
> (2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection"

The said Respondent's Counsel submitted that the axis of the Respondents' case is that Court under rule 55 sub rule 2 may postpone a sale of property that has been advertised for sale, where probably the issues in regard to this property would have been addressed had it not been sold.

Their contention was that the property was advertised in Bukedde Newspaper of 7th February 2006, a valuation report as requested by Court was deposited and the Registrar signed the final order for sale not below Ug Shs 45,000,000 on 20th March 2006. The Court record shows that the property was sold to the 3rd Respondent, Segawa Ronald Gyagenda on 30th March 2006. Two returns of successful execution of the warrant were filed on 6th April 2006 and 30th May 2006. They therefore submitted that the property was already out of the operation of the provisions of Order 22 rule 55 CPR because after the sale of the property the Court has nothing to investigate as the objection would have been delayed. On that ground they prayed for the dismissal of the application.

I was referred to the case of *Intraship (U) Ltd Vs G. M. Combine (U) Ltd Flugence Mengereza & anor HC.C.S. No 44/ 1993 (1994) 111 KALR 22* wherein Kireju J held:-

> "The provisions of Order 19 (now 22) rule 55 and 57 under which this application is brought are very clear, the Court is required to investigate the objectors' interest in the attached property. The cited provisions deal with the attached property before it is sold. After the property is sold then the court has nothing to investigate as the objection would have been delayed and the objector has to look for a remedy elsewhere as he would be completely out of the ambit of these rules"

In his submission in reply Mr. Mbogo distinguished the ruling above on three grounds. First that in the above case the attached properties were not in possession of the objector and the matter was decided on a preliminary point. Secondly that the subject matter therein were moveable properties, a motor vehicle and boxes of Nomi Soap, while in the instant case the subject matter is immovable property and in possession of the objector. Thirdly, that the trial judge was stating a general principle regarding objector proceedings after property had been sold.

The case cited above has been discussed by Tsekoko JSC in the Supreme Court case of *Lawrence Muwanga Vs Stephen Kyeyune Civil Appeal No. 12 of 2001*. His Lordship stated:

> "--- Indeed, the respondents Counsel distinguished the Intraship case (supra) from the present case in that in the former the property sold was immovable property, and I find that that distinction is quite relevant to this matter considering that the property in these proceedings is still intact and is occupied by the family of the deceased objector. I agree with the opinion of the editors of Chittaley & Rao's Code of Civil Procedure that a judicial sale, unlike a private one, is not complete immediately it takes place. It is liable to be set aside on appropriate proceedings. If no such proceedings are taken or if taken and are not successful, the sale will then be made absolute."

The applicant contends that at the time of the alleged sale and up to date she is in possession of the property. In paragraph 26 of the applicants' affidavit dated 21st September 2006 she avers that the land and developments in the property are not in the possession of the 2nd respondent. Then in paragraph 6 of her affidavit in rejoinder dated 15th October 2006 the applicant avers that at the time of the sale of the property to the 3rd Respondent on 30th March 2006 to date her family, workers and servants were the persons in physical occupation of the property. And in paragraph 8 that upon learning of the impeding takeover of her property she immediately filed this application. This application was filed on 15th June 2005. The fact that by the time of filing this application the property was not in the possession of any of the Respondents is strengthened by the fact that on 1st June 2006 the 3rd Respondent, Segawa Ronald Gyagenda, filed Misc. Application No 399 of 2006 wherein, as purchaser in execution, he was seeking vacant possession of the property and removal of the occupants. In Nyiiro Joseph Erisa, the Court Bailiff's affidavit in support of the above application he stated that he had in an auction sold the property to the 3rd Respondent but that the property remained in the possession of the 2nd Respondent and his agents. The above is evidence to show that execution had not yet been completed or concluded. Neither had possession or title passed to the 3rd Respondent, the purchaser in execution.

In her affidavits dated 10th July 2006 and 18th September 2006 Atingu Stella contends that the applicant forfeited her right to redeem the property when it was advertised for attachment and sale and had since been sold. In her affidavit dated 11th October 2006 the applicant states that

she was never a party to the Mortgage Deed and H.C.C.S No 662 of 2005 and that she was not aware of the advertisement for attachment and sale of her property and even the sale of her property to the 3rd Respondent. That upon learning of the impending takeover of the property she immediately filed this application.

In his reply Mr. Mbogo submitted that the sale of the property to the 3rd Respondent was illegal in that it contravened Order 22 rule 64 of the CPR. The above rule provides that no sale shall take place until after the expiration of at least thirty days in the case of immovable property. Counsel argued that the warrant of attachment was issued on 20th March 2006, that is a difference of 10 days.

The record shows that a warrant of attachment and sale of property was issued on 25th January 2006 returnable of 28th February 2006. The property was advertised in the Bukedde Newspaper of 7th February 2006. In his letter filed in Court on 7th March 2006 that Court Bailiff states:-

> "We attached the said land and on the 7th February 2006 we advertised it in the Bukedde News Paper. The 30 days required by law expired on the 6th March 2006 yet the warrant is to be returned on the 28th February 2006.
>
> In the premises I return this warrant partly executed and applying to this honourable court for renewal so that am able to complete this execution."

On the letter is endorsed 'Renewed for another 30 days ---"The endorsement is neither signed nor dated. However, on record is another warrant of attachment and sale of property issued on 20th March 2006 returnable on 20th April 2006. The return filed by the Court Bailiff on 6th April 2006 states that the warrant was renewed on the 20 March 2006 and on 30th March 2006 at a public auction the property was sold to Segawa Ronald Gyagenda, the 3rd respondent. Apparently there was no fresh **advertisement** before the sale was conducted upon the renewal. The first warrant issued on 25th January 2006 expired on 28th February 2006. From the wording of the Court Bailiff's letter dated 31st March 2006 and filed in Court on 6th April 2006, it is confirmed that the second warrant of attachment was actually issued on 20th March 2006. By

that date there was no warrant to renew but a fresh warrant was issued. Without a fresh advertisement of the property, it was auctioned on 10th March 2006 only ten days from the date of issue of the fresh warrant.

Order 22 rule 65 CPR provides:

> "(1) the court may in its discretion adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his or her discretion adjourn the sale, recording his or her reasons for the adjournment, except that where the sale is made in or within the precincts of the court house no such adjournment shall be made without leave of Court.
>
> (2) Where a sale is adjourned under subrule (I) of this rule for a longer period than seven days, fresh public notice shall be given unless the judgment debtor consents to waive it:"

My considered opinion is that the same principle should apply where the warrant pursuant to which the attachment was effected and property advertised has expired and a fresh warrant is issued. In *Maria Anyango Ochola & Others Vs Hannington Waswa & Anor (1988 – 1990) HCB 102* property was attached and advertised for sale. The warrant expired on the 30th September 1972. The bailiff proceeded to make a further advertisement on the 14th December 1972 but effected sale immediately before the 30 days period in he advert. Justice Mukanza held referring to Order 19 (now order 22) rule 65 (I) and (2) CPR that where a sale is adjourned for more than 7 days a fresh public notice is to be given unless the judgment debtor consents to waive the giving of such notice. In *Rosemary Eleanor Karamagi Vs Angoliga Malimord HCT-00-CC-MA-0733 of 2005* my brother Justice Godfrey Kiryabwire stated, and I agree with him:-

> "It would therefore appear to me that any extension and or adjournment of the warrant however, called beyond 7 days would require advertisement unless the judgment debtor waived the requirement."

There is no evidence of waiver in the instant case.

All the above considered together I find that in the circumstances of this case there was no designed delay to prevent the investigations from being conducted by this Court.

In proceeding with the investigations what is to be investigated is provided by rules 56, 57 and 58 of Order 22 of the Civil Procedure Rules. As I held in my earlier ruling in Betty Namugenyi Vs Daisen Co (U) Ltd & Anor & Forward International Co Ltd (Objector) H. C. Misc. App 522 of 2005 (Comm. Division) the issues for investigation as derived from the above three rules can be summarised as follows:-

1. Whether at the time of the attachment the objector had some interest in the property attached.
2. Whether at the time of the attachment the property attached was in the objector's possession.
3. If so , whether the objector was holding possession of the attached property on his own account or on account of the judgment debtor, or
4. If not, whether (i) the property was not in possession of the judgment debtor or some person in trust for him or in occupancy of a tenant of other person paying rent to the judgment debtor;
   (ii) being in the possession of the judgment debtor at such time it was so in his possession not on his own account or as his own property.

It is trite that the sole question to be investigated is one of possession. That is whether on the date of the of attachment the property was in possession of the objector and if so whether it was so in his possession on his own account or in trust for the judgment debtor, or whether it was in the possession of the judgment debtor and if so whether it was so in his possession not on his own account or as his own property. Therefore the scope of the investigation is not for determining ownership or title being threatened. The questions of legal right or title are only relevant so far as they may affect the decision as to account of or in trust for the judgment debtor

or some other person. See *Harilal & Co Vs Buganda Industries Ltd (1960) EA 318, Mineral Water Ltd Vs Amin Pirani & Anor (1994-95) HCB 87*.

As to whether the objector at the time of attachment had an interest in the property, it is an undisputed fact that the property was sold by the Court Bailiff, in execution of the judgment in Civil Suit 662 of 2005, to the 3rd respondent Segawa Ronald Gyagenda on 30th March 2006. In her affidavit dated 21st September 2006 paragraphs 2, 3 and 4 the applicant avers that she is the purchaser and registered proprietor of the property having bought the property from the 2nd Respondent Kimbugwe Jemba Jackson on 24th January 2003 vide an agreement of sale Annexture "A" to the affidavit. That she was registered as proprietor thereof on 10th March 2003 under instrument No. KLA 247371. In his affidavit dated 8th September 2006 Emmanuel Ntananga had made similar averments in paragraph 2 thereof. Annexture B thereto was a photocopy of the certificate certified as a true copy for the Commissioner Land Registration on 5th April 2006. The copy of the certificate of title indicates that the 2nd Respondent Kimbugwe Jemba Jackson was registered thereon as proprietor on 27th April 1995 under Inst No. KLA 172793. On 19th April 2001 in a Special Certificate was issued under Inst. No. KLA 224225 and the Applicant Allen Nsubuga Ntananga was registered as proprietor on 10th March 2003 under Inst. No. 247371. The 2nd Respondent in his affidavit dated 12th October 2006 paragraph 2 and 5 admits having sold and transferred the property to the objector.

In his affidavit dated 15th September 2006 the 3rd Respondent Segawa Ronald Gyagenda in paragraph 4 avers that prior to his purchase of the property he carried out a search in the land office and found that the property was registered in the name of Kimbugwe Jemba Jackson and not that of the Applicant. But the 3rd Respondent does not attached any certified copies from the land Registry so as to confirm his findings. He instead attached the owners copy of the Certificate of Title which save the 2nd Respondent as registered proprietor on 27th April 1995 and the 3rd respondent as Registered proprietor on 7th August 2006. The 3rd Respondent registration was after this application had been filed on 15th June 2006. A similar photocopy save that the 3rd Respondent had not yet been registered thereon, was annexed to the Valuation Report made on 14th March 2006 for the purposes of the sale. It is very clear from the Valuation report that the Valuer did not carry out a search in the Land Registry. They based their report as to ownership

on the Certificate of Title availed to them which indicated that the 2nd Respondent was the Registered Proprietor as per Inst. No. 172793 dated 27th April 1995. Atingu Stella in her affidavit dated 18th September 2006 paragraph 3 avers:-

> " That on the 14th of June 2004, Kimbugwe Jemba Jackson the registered proprietor of the suit property mortgaged his land as security for the loan to the 1st Respondent by depositing his genuine certificate to title to the said land."

She had made a similar averment in her affidavit dated 10th July 2006 but in paragraph 10 thereof she stated that: -

> "Kimbugwe Jemba Jackson has a good and genuine title to the said property having been in possession of a special certificate since the original title had been lost."

The above averment is contrary to the evidence on record. The certificate of title surrendered to the judgment creditor and passed on to the valuer and also annexed to the 2nd respondent's affidavit of 15th September 2006 was not a special Certificate of Title but the Original Duplicate Certificate of Title.

Yet on 19th April 2001 under Inst. No KLA 224225 the 2nd Respondent had been issued a Special Certificate of title where the Registrar's endorsement reads:-

> "Issue of a Special Certificate of title. The Duplicate Certificate of Title which was originally issued having been lost"

Section 70 of the Registration of Titles Act provides that "the special certificate shall be available for all purposes and uses for which the duplicate certificate of title so lost or destroyed or obliterated would have been available and shall be equally valid with the duplicate certificate of title to all intents."

In paragraph 5 of his affidavit dated 15th September 2006 the 3rd Respondent further avers that:-

> "– the certificate of title attached to the said Affidavit in support is probably forged or was irregularly obtained from the Land Office"

Cleary Ssegawa Ronald Gyagenda is not sure of his averment above and does not disclose any evidence of forgery or irregularity in obtaining the Objectors Certificate of Title. The Registrar of Titles was made a party to this application but he did not file any affidavit in reply to any of the affidavits in support of this application. Probably had the Registrar of Titles filed an affidavit he would have substantiated the 3rd Respondent's averment above.

Under section 59 of the Registration of Titles Act a Certificate of Titles is conclusive evidence that the person named there has an interest in the land described therein. However, this presumption of ownership cannot be conclusive evidence of ownership. It is rebuttable. Order 22 rule 60 CPR is very clear on this. It states:-

> "Where a claim or an objection is preferred the party against whom an order is made may institute a suit to establish the right which he or she claims to the property in dispute, but subject to the result of the suit, if any, the order shall be conclusive."

In *Mineral Water Ltd Vs Amin Pirain & Anor (Supra)*. Musoke-Kibuuka Ag. Judge (as he then was) stated that at the end of the objector proceedings one of the parties must sue in order to determine the issue of the title to property as the order made under the rules is only provisional.

The order remains conclusive but subject to the outcome of the suit, if any. See *Transafrica assurance co Vs National Social Security Fund S.C.C.A. No. 1 of 1999*. As of 30th March 2006 when the property was auctioned and sold to the 3rd Respondent the Objector was the Registered proprietor of the land. Until otherwise proved, I find that by that date the Objector had an interest in the land as purchaser thereof from the 2nd Respondent and as the Registered proprietor.

The next issue is whether at the time of the attachment the property was in the Objectors possession. In paragraph 1 of her affidavit dated 21st September 2006 the Objector, Allen

Nsubuga Ntananga, avers that currently she is resident in the United States of America. I the first affidavit in support sworn by Emmanuel Ntananga, he avers in paragraph 8:-

> "That the applicant and her family have resisted the said execution and did inform the bailiff that the property is owned by the applicant and it is her who is in possession."

In his second affidavit sworn on 8th September 2006 wherein Emmanuel Ntananga avers that he is the appointed attorney of the Objector, he therein avers that the 1st Respondent obtained judgment against the 2nd Respondent on 11th January 2006. That the 1st Respondent pursuant thereto sought a warrant of attachment of the Applicants land and property. In paragraph 8 he avers:-

> "THAT, I have resisted the said execution and did inform the bailiff that the property is owned by the applicant and it is her who is in possession."

The Court Bailiff did not file any affidavit in reply to deny or contradict the above averment that the execution was resisted and that he was informed that the property was owned by the applicant and in her possession. Possession can be actual or constructive. In paragraph 26 of her affidavit dated 21st September, 2006, the Objector avers that the property is not in the 2nd Respondents possession, and neither his property but hers. In her affidavit in rejoinder dated 11th October 2006 the Objector in paragraph 6 avers that at the time of the sale of the property to the 3rd Respondent on 30th March 2006 to date her family workers and servants were/are the persons in physical occupation of the land and not the 2nd Respondent.

What is of relevancy to this application is the status of occupation as at the date of attachment. In all her four affidavits, filed by the 1st Respondent, Atingu Stella did not address the issue of possession of the property as at the time of attachment or at all. In his affidavit, the 3rd Respondent Segawa Ronald Gyagenda acknowledges the fact that at the time of attachment the applicant was in possession of the property. His only contention is that the applicant was wrongly in possession of the property. The 4th Respondent in its affidavit in reply deponed to by

Semakula Mukiibi does not address the issue of possession as of the date of attachment. This is expected since the 4th Respondent only came on board after its purported purchase of the property from the 3rd Respondent.

It is neither denied nor rebutted that the Objector was in possession of the property at the time of attachment in any of the respondents' affidavits. There was not affidavit deponed to by the Court Bailiff to clarify as to the status of possession at the time of the attachment. The 1st, 3rd and 4th Respondents Counsel submitted that the Respondent's had established that the judgment debtor was in actual possession of the property at the time of attachment on his own account. With due respect, their submission is not supported by any evidence. The presumption is that an averment on oath which is neither denied nor rebutted is admitted as the true fact. See *Massa Vs Achen (1978) HCB 279*. Considering all the above I find that when the property was attached it was in the possession of the Objector.

The next issue is whether the Objector was in possession of the property on account of or I trust for the judgment debtor (3rd Respondent). The 1st 3rd and 4th Respondents' case, as I have gathered from their respective affidavits and the submission of counsel for the Respondents, is that the objector or her agents were in possession on account of the Judgment debtor (2nd Respondent). Counsel submitted that the purported sale of the property to the objector and the claimed possession was a hoax that was engineered by the 2nd Respondent to defeat justice. As basis for their submission, counsel pointed out the following;-

FIRST - The obtaining of a special certificate under dubious circumstances namely:-

(i) An application for a special title is made on the 17th April 2001

(ii) The Register writes on the 19th April 2001 to publish notice in gazette.

(iii) The notice is published in the gazette on the 20th April 2001.

(iv) The special certificate is made on the 19th April 2001 before the notice in the Gazette.

True a special certificate of Title can only be issued after the notice of the application for it has been gazetted. However there is an unexplained issue as to when the instrument number is dated. Is it on the date when the Register writes for the publication of the notice or when the special Certificate of Title is actually issued!! It was only the Register of Titles who could offer an explanation. Unfortunately the Register of Titles did not file any affidavit. The objector was registered as proprietor on 10th March 2003 on the Special Certificate of Title so issued as above. The issue raised by the Respondents with regard to the Special Certificate of Titles goes to the validity thereof, which is outside the scope of the investigation before me.

SECOND - The judgment debtor pledged the Certificate of Title to obtain a loan from the 1st Respondent/judgment –creditor with probably possession of two titles. Counsel argued that this was a fraud prepared to defeat justice of which the judgment debtor/2nd Respondent was the architect. In her affidavit dated 10th July 2006 Atingu Stella makes the following averments;-

> "3. *THAT on the 14th June 2994, Kimbugwe Jemba Jackson the registered proprietor of the suit property mortgaged his land as security for the loan to the Respondent by depositing his genuine certificate of title to the said land.*
>
> 4. *THAT on the 10 June 2005 the Plaintiff/Respondent registered its interest in the said land as an encumbrance.*
>
> 14. *THAT the Applicant in this matter* ***ALLEN NSUBUGA NTAMANGA*** *and Kimbugwe Jemba Jackson have connived and are actually involved in a fraud to defeat the course of Justice."*

Atingu Stella makes similar averments in her affidavit dated 4th October 2006. In paragraph 12 thereof she further avers that the Applicant cannot be allowed to benefit from her own fraud.

In her affidavit dated 11th October 2006 Allen Nsubuga Ntumaga states;-

> *"2 THAT in answer to paragraph 3, I state that Kibugwe Jemba Jackson on 14/6/2006 using a fake, replaced and substituted duplicate certificate of title, mortgaged my land to the 1st Respondent as security for a loan.*

3. *THAT on the 10th June 2005 before establishing the ownership of the land, the 1st Respondent registered its mortgage on my land as an encumbrance"*

In effect the objector is denying being a party to the fraud, if any committed by the 2nd Respondent to the 1st Respondent and contends that had the 1st Respondent carried out a proper search before; it would have discovered the change of proprietorship and not accepted the certificate of title as security. The sale agreement show that the objector bought the land on 24th January 2003 and the certificate of titles shows that she was registered under inst. No. KLA 247371 of 10th March 2003. The deposit as security was long after the objector had been registered as proprietorship of the land. There is no evidence to show that the objector was fraudulently registered as proprietor of the property. The 1st Respondents mortgage was registered as Inst No. 275162 of 10th June 2005. The reality of the matter is that it is this registration of the mortgage which is questionable since there had already been registered on the certificate of title a change of proprietorship from the 2nd Respondent to the objector. There is no evidence that the certificate of title was received by the 1st Respondent as security pursuant to a Power of Attorney granted by the objector to the 2nd Respondent to mortgage the Certificate of Title.

Considering all the above I find that if there was any fraudulent pledge of the Certificate of Title to the 1st Respondent, there is no evidence to show that the applicant/objector was party to it.

THIRD – The conduct of the 2nd Respondent following the attachment of the property. Counsel for the 1st, 3rd and 4th Respondents pointed out at that after reading in Bukedde Newspaper that the property was on sale, the 2nd Respondent rushed to Court and on 24th February 2006 filed Misc. App. No. 139 of 2006 seeking an interim order to be issued to stay the sale. In the Notice of Motion the 2nd Respondent, as applicant therein, describes the property at Kyaddondo Block 232 plot 1306, the subject matter of this applicant, as his property. In paragraph 4 of his affidavit in support of that application and deponed to by him, the 2nd Respondent states;-

"THAT while the application is still pending my property at Kyaddondo Block 232 plot 1306 Kireka is at risk of being sold and disposed of."

On 17th March 2006 the 2nd Respondent wrote to the Deputy Registrar High Court (Commercial Division) withdrawing the application. In the letter of withdraw the 2nd Respondents lawyers then stated;-

> "We have since ascertained that Kyaddondo Block 232 plot 1306 *Kireka was sold by our client to Allen Nsubuga Ntananga on 24th January 2003 A photocopy of the agreement of sale is attached*
>
> *We have established that the land was transferred into the buyer's names on 10th March, 2003 even before 1st June 2004 when the loan in issue was applied for.*
>
> *Accordingly, we find that our application No. 139 of 2006 was filed in error and we withdraw the same.*
>
> *However, we still have interest in Miscellaneous Application No. 138 of 2006----".*

In paragraph 9 of her affidavit dated 18th September 2006, while referring to Misc. Application 139 of 2006, Stella Atingu states:-

> "*THAT it is not possible that Kimbugwe Jemba Jackson could be so much interested in the property that he does not own or have interest in, to the extent of filing numerous Court applications in a view to secure the same".*

Stella Atingu in her earlier affidavit dated 10th July 2006 had also made an averment similar to the one above, highlighted the affidavit of the 2nd Respondent in support of Misc. Application 139 of 2006 and introduced an allegation of connivance between the 2nd Respondent and the Applicant.

I agree that the 2nd Respondent's interest in filing Misc. Appl. 139 of 2006 whereby he was seeking a stay of sale of property which he had long ceased to have ownership of or interest in is questionable. Can he be believed that the he had made the application in error?

I have to consider the events thereafter. The property was advertised for sale in the Bukedde Newspaper of 7th Feb. 2006. On 24th Feb. 2006 the 2nd Respondent filed Misc. Appl. No. 139 of 2006 seeking an interim order to stay the sale. The application was fixed for hearing on 6th March 2006. The court record shows that the application was not prosecuted; instead it was withdrawn on 17th March 2006. The effect of that withdraw was that the property was put back to the risk of being sold and disposed of. The record shows that the property was actually sold, in an auction conducted on 30th March 2006, to the 3rd Respondent. This application was filed on 15th June 2006.

If there was any connivance between the objector and the 2nd Respondent as Ms Stella Atingu in her affidavit dated 10th July 2006, wants the court to believe, the objector would have filed this application before the withdraw of Misc. App. No. 139 of 2006 so as not to expose the property to the risk of being sold. If the 2nd Respondent still had personal ownership or interest in the property he would not have taken the risk which he had sought to safe guard against vide Misc. Application 139 of 2006 by withdrawing that application without an alternative application on record to serve the same purpose.

Considering all the above I find that the objector was at the time of attachment not in possession of their property on account of or in trust for the Judgment debtor, the 2nd Respondent. There is no evidence to show that the objector was in possession on account of anybody else. I therefore find that the objector was in possession of the suit property on her own account.

I have observed one strange thing which I must comment about before taking leave of this matter. The property was sold to the 3rd Respondent in an auction conducted on 30th March 2006. On 1st June 2006 Ssegawa Ronald Gyagenda filed Misc. App. No. 399 of 2006 for vacant possession of the property. The instant application was filed on 15th June 2006, initially against Uganda Micro Finance Limited and Ssegawa Ronald Gyagenda (3rd Respondent). On 15th September 2006, the 3rd Respondent filed an affidavit in Reply to this application. In that affidavit the 3rd Respondent does not mention having sold the property to the 4th Respondent. On 18th September 2006 the 3rd Respondent withdrew his Misc. Application No. 399 of 2006 on the ground that the issues raised therein could be resolved in the instant application. Yet a Land

Registry substitute white page made out on 11th July 2006 under Inst. No. KLA 300371, show that Rona Investments (U) Ltd, the 4th Respondent, was registered as proprietor on 18th August 2006 under Inst. No. KLA 303563. I find it strange why the 3rd Respondent in his affidavit dated 15th September 2006 in reply to this application, he does not make mention of this change of proprietorship from himself to the 4th Respondent. Another strange thing is that the 4th Respondent, in his affidavit in reply to this application does not attach any evidence of purchase of the property.

In the final result I accordingly order that the lands and developments comprised in Kyaddondo Block 232 Plot 1306 Kireka – Banda be released from attachment and sale, the sale in the action conducted on 30th March 2006 is hereby nullified and set aside. The parties affected by this ruling are advised to seek appropriate remedies. The Objector/Applicant is awarded costs of this application against the 1st, 3rd and 4th Respondents. I so order.

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Hon. Mr. Lameck N. Mukasa

Judge

22nd December, 2006

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