

Last Updated: 19 March 2007

Mugga Adam Vs Ranmal Keshwlla-HCT-00-CC-MA-0679-2006 [2007] UGCommC 10 (2nd February 2007)

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0679-2006

(Arising out of HCT-00-CC-CS-434-2006)

RANMAL KESHWALA.....PLAINTIFF

VERSUS

STEPHEN BAIRUKANGA.....DEFENDANT

2nd February 2007

BEFORE: HON. JUSTICE LAMECK N. MUKASA

RULING

These objector proceedings were brought by Notice of Motion under Order 22 rules 55, 57, Order 52 rule 1 of the Civil Procedure Rules and section 98 of the Civil Procedure Act whereby the objector, Mugga Adam seeks orders that:-

- (a) Motor vehicle registration number UAH 420E Mercedes Benz be released from attachment.
- (b) Costs of this application provided for.

The application is support by an affidavit deponed to by Objector Mugga Adam wherein he avers that he is a bona fide purchase of the motor vehicle having bought it from one Stephen Bailukanga Annexture "A" is an Agreement date 1st June 2006 which shows that the objector had bought the vehicle from the said Stephen Bailukanga at Shs. 11,000,000/=. The objector further avers that the Judgment Debtor, who is the said Stephen Bailukanga, no longer has any interest whether legal or equitable in the motor vehicle given the fact that the objector took over ownership after providing full consideration for the same. The objector states that he has never been a party to Civil Suit No. 434 of 2006 and only became aware of the fact that his vehicle was subject to an order of attachment on 25th September 2006. This application was filed on 28th September 2006.

The Respondent filed an affidavit in reply dated 27th October 2006 and deponed to by Kagoro Friday Roberts a Bailiff. The said bailiff therein avers that he advertised the motor vehicle on 2nd September 2006 in the Bukedde News paper and sold the vehicle to Bhima Khunt Meraman in an auction conducted on 16th September 2006.

In his submissions Mr. Siraje Ali argued that the application had been overtaken by events sanctioned by this Court. In **Intraship (U) Ltd vs. Combine (U) Ltd, Flugence Blunyerega & Anor H.C.C.S No. 44 of 1993 [1994] 111 KALR 22** Kireju J stated:-

"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 objector's interest in the attached property. The cited provisions deal with the attached property before it is sold. After the property is sold them 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".

I am aware that the above holding was distinguished by Tsekoko JSC in the Supreme Court case of **Lawrence Muwango vs. Stephen Kyeyune, S.C Civil Appeal 12 of 2001** where the subject matter, unlike in the instant case and the above case, was immovable property and still in the possession of the objector.

That being the law, the objector in his affidavit in rejoinder disputes the said attachment and sale of the vehicle. In paragraphs 3, 4, and 5 he avers that around 5th August 2006 he made a report about the motor vehicle at Wandegeya Police Station vide reference No. CRB/1929 of 2006. That on 27th or 28th September 2006 he personally impounded the vehicle and took it to Wandegeya Police Station. That the said Kagoro failed to produce any evidence of sale of the vehicle or return of the warrant at the Police Station. That Kagoro only had an order of attachment. It is further averred that at the time when he impounded the vehicle it was in the custody of one Musisi Enock an agent of the Respondent. That the alleged buyer Bhima Kgunt Meraman has never gone to the Police at Wandegeya to make a statement as an interested party. In paragraph 7 of his affidavit in rejoinder the objector states that he verily believes that the motor vehicle had not yet been sold and the papers filed claiming sale are a hoax and a forgery.

In his submission Mr. Moses Kuguminkiriza pointed out that the Return by the Court Bailiff was filed on 29th September 2006, after this application had been filed on 28th September 2006 and fourteen days after the alleged sale. He argued that the Return was filed to defeat this application. Secondly that the said purchaser Bhima Khunt Merauman had not filed any affidavit to protect his interests if any. Further that Misc. Appl. No. 681 of 2006 had been filed by Raumal Keshwala, the Respondent in this application and Judgment Creditor in the Main Suit and not by the alleged purchaser Bhima Khintu Meraman. Counsel wondered what interest the Judgment Creditor had in a Vesting Order. Thirdly Counsel pointed out the Objectors averment in his affidavit in rejoinder that the said purchaser have never gone to the Police to make a claim for the vehicle..

However the Objector in his affidavit in rejoinder does not show what prompted him to make the report he made to the Police Station and to impound the vehicle. Neither does he state what was the nature of the report. The vehicle was not in his custody or management since he avers that at the time the attachment order was issued the vehicle was in possession of the Judgment – Debtor on hire from him. It is his averment in paragraph 5 of his affidavit in support that he learnt of the impending attachment on 25th September 2006. It is also his averment in the affidavit in rejoinder that he personally impounded the vehicle on 27th and 28th September 2006 when it was in the custody of Musisi Enock who he alleges was an agent of the Respondent. He does not however state how he established that Musisi Enock was the Respondent's agent and not of the Judgment –Debtor who had hired the vehicle. He further alleges that Bhima Khunt Meraman had not gone to the Police at Wandegeya to make a statement as an interested party. He contends that this was so stated in his affidavit to the best of his knowledge and belief. Since the Applicant was not a Police Officer one wonders how he acquired the knowledge in this regard. He does not disclose any source of information if at all he was so informed and he does not claim to have based his averment in this regard on information. With regard to the application for a vesting order there is no requirement that the application should be made by the purchaser in execution. A diligent Judgment-Creditor would be interested to ensure that a warrant of attachment and sale issued in his favour is fully executed.

In **Lawrence Muwanga vs. Stephen Kyeyune** (supra) Tsekoko JSC stated:-

" ... 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 Objector was in effect seeking an order to set aside the sale of the vehicle conducted by Kagoro Friday Roberts the Court Bailiff pursuant to the warrant of Attachment and sale issued on 30th August 2006. Considering the fact that the subject matter was a motor vehicle, which is moveable property, and already outside the possession of the Objector and the circumstances of this application as pointed out above I find that this application is not appropriate for an order setting aside the sale. The matter was already outside the scope of investigation under the rules cited.

My finding above suffices to put this application to rest. I will nevertheless proceed to consider this application on the basis of the issues for investigation as provided for by rules 56, 57 and 58 of Order 22 of the Civil Procedure Rules. Under the said rules the issues to be investigated 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 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 in possession of the Judgment-Debtor or some person in trust for his or in occupancy of a tenant or other person paying rent to the Judgment – Debtor, or
 - (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.

See **Betty Namugenui vs. Daisen Co Ltd & Anor and Forward International Co Ltd (Objector) H.C Misc. Appl. 522 of 2005 (Comm. Division); Harila & Co. vs. Buganda Industries Ltd. [1960] EA 318.**

In paragraph 10 of his affidavit in support the Objector states that at the time the attachment order was issued the vehicle was in possession of Stephen Bairukaga, the Judgment-Debtor. The Objector's case is that the Judgment-Debtor was not so in possession on his account or as his own property. His claim is that he had vide an agreement annexure "A" to his affidavit in support bought the vehicle from the said Stephen Bairukaga, the registered owner who had surrendered the Log Book and handed over the transfer form of the vehicle duly signed in favour of the Objector. The objector explains the Judgment-Debtor's possession of the vehicle. He states that the vehicle was in the possession of the said Stephen Bariukanga as hirer thereof. He attached a Hire Agreement marked "E".

The Motor Vehicle Registration Book No. URA/LB 282887 shows that the Judgment-Debtor Stephen Bairukanga is the registered owner of the vehicle. Section 30 of the Traffic and Road Safety Act 1998 provides:-

"The person in whose names a motor vehicle --- is registered shall, unless the contrary is proved, be presumed to be the owner of the Motor Vehicle ---".

That presumption of ownership is not conclusive. It is rebuttable. To rebut that presumption the Objector has adduced the evidence of an agreement dated 1st June 2006. By that agreement the said Stephen Bairukanga sold the vehicle to the Objector at Shs. 11,000,000/= which according to the agreement was paid in cash. However, despite the cash payment, the surrender of possession of the

vehicle and the Original Log Book to the Objector, the seller undertook to handover the transfer forms by 1st July 2006. That is after a period of one month. Why that intentional lapse of time! Even then the transfer forms shows that it was signed on 28th July 2006.

An agreement dated 15th June 2006 shows that the Objector hired out the vehicle to the Judgment-Debtor, the very person who had on 1st July 2006 sold the vehicle to him and who had not yet executed a transfer thereof to him. Yet by another agreement dated 18th July 2006 the very same vehicle is hired out to the Judgment-Debtor this time by another entity M/s Adamawa Investments (U) Ltd.

Though the agreement was signed by the Objector Adam Mugga, it is clearly indicated thereon that he signed so as Managing Director of Adamawa Investments (U) Ltd. The agreement was made on the letter head paper of Adamawa Investment and stamped with the said Company's stamp. A limited liability Company is a corporate legal entity independent of its shareholders, directors or officials. In that agreement the said Adamawa Investments (U) Ltd refers to the vehicle as "*my vehicle*". In the circumstances I agree with the submission of the Respondent Counsel that the Objector had by the hire agreement dated 18th July 2006 shown that he no longer had interest in the vehicle. Yet the Objector had claimed interest in the vehicle as purchaser and owner of it.

Section 31 of the Traffic and Road Safety Act 1998 requires the person selling a vehicle within fourteen days after the sale to notify the licensing officer of the sale. This was not complied with. The Objector's explanation for the delay or failure was that his endeavors to have the motor vehicle registered into his name yielded nothing since a caveat had been slammed on to the vehicle by Ranmal Keshwala, the Judgment-Creditor. The Objector had allegedly brought the vehicle on 1st June 2006. The warrant of attachment and sale of the vehicle was issue on 30th August 2006. The Objector does not give the date when the vehicle was allegedly caveated. It is only after the warrant of attachment and sale had been issued that the Judgment-Creditor got vested interest in the vehicle which could enable him to caveat it. The warrant was issued nearly three months from the date of the alleged sale, therefore long after the fourteen days provided by section 31 above had lapsed. There is no merit in the Objectors explanation for the delay to register the vehicle in his names.

Considering all the above I find that the Objector has failed to prove that he had any interest in the vehicle at the time of attachment and has failed to show that the Judgment-Debtor had possession of the vehicle on account of the Objector. All in all this application fails. The application is dismissed with costs.

Lameck N. Mukasa

JUDGE

2/02/07