

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

HCT - 00 - CC - MA - 565- 2010

STANBIC BANK UGANDA LTD ::: APPLICANT

VERSUS

NEW MAKERERE KOBIL STATION LTD ::: RESPONDENT

Civil procedure – execution – attachment – release from attachment

Civil procedure – attachment – whether attachment can issue before judgment

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

R U L I N G:

This is an application under Order 40 rules 8 and 12 of The Civil Procedure Rules for Orders that Bus Registration No. UAK 948T which was attached by Orders of this Court be released from attachment.

The brief facts of this case are that Bus Registration No. UAK 948T was attached under the warrant of this Court in HCCS No. 425 of 2009 **New Makerere Kobil Station Ltd. V Allianz Tours and Travel Ltd.** pending the delivery of judgment in the said suit. It is the case of the Applicant that the said bus while at all material times in the possession of Alliaz Pharmacy Ltd. belonged to the Applicant as lessor/bank by virtual of a lease agreement dated 10th April, 2008 Alliaz Pharmacy Ltd. was just a lessee and ownership of the bus would only pass to it on expiry of the lease. A copy of the Bus Logbook shows this. Currently Alliaz Pharmacy Ltd. still owes the Applicant Shs.100,424,561/= on an account of installment arrears.

It is therefore the case for the Applicant that it is not a party to HCCS 425 of 2009 and it was erroneous for the said bus to have been attached.

The Respondent in reply states that the said bus was found in the hands of the Respondent and was attached over 9 months ago but the Applicant never sought to bring objectors proceedings

in respect of the bus until now. It is the case for the Respondent that given the passage of time, involving inordinate delay the Applicants are estopped by their conduct to pursue the matter. The said bus had been sold by Alliaz Pharmacy Ltd. to Rev. Bikangiso without encumbrance and that now the Respondent have a lien on the said bus for non payment of fuel.

Mr. J. F. Kanyemibwa appeared for the Applicant bank while Mr. Oyine appeared for the Respondent.

Counsel for the Applicant submitted that the bus was not available for sale. He noted that a junior officer at the Applicant bank had taken the wrong procedure to write to the court about the Applicant's opposition to the attachment instead of briefing their lawyers to file a formal application in court.

Counsel for the Respondent submitted that the Applicants had exhibited inordinate delay in placing this application. He submitted that he who comes in equity must come with clean hands. In this regard, I was referred to the case of

Lawrence Muwanga V Stephen Kyeyune SCCA 12 of 2001

I have addressed my mind to the chamber summons, the affidavits in support and against it and the submissions of counsel. Order 40 rule 8 provides for the investigation of property attached before judgment and states

“... where any claim is preferred to property attached before judgment, the claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money ...”

The import of Order 40 rule 8 is that the same test for release from attachment under Order 22 rules 55 – 57 should be applied. That is whether the property in possession of the person at the time of attachment was in his or her possession on his or her own account.

This is the same possession I took in a related application involving the same bus in **Rev. Ezra Bikangiso V New Makerere Kobil Station** M. A. 10 of 2010.

In that application (and I see no reason to depart from that position), I found that a lessee, without special authority to the contrary cannot sell what is owned by a lessor. I also found that the memorandum of understanding between Alliaz Pharmacy Ltd and Rev. Ezra Bikangiso (annexture 'A' to Ms. Grace Mugabi's affidavit in reply) that the said bus was without an encumbrance to be a falsehood.

Clearly a review of the bus logbook shows that the bus is owned by the Applicant and lease agreement shows that it is the subject of a lease with the Applicant bank. So, I find that the Applicant bank owns the bus.

As to the release from attachment, it was held in the case of

Abby Mugimu V Basa Basa [1991] ULSLR 1 91 at 195

That no attachment before judgment can issue where it affects the rights of third parties. Clearly the rights of Applicant under the lease agreement are being affected.

There is the issue of delay by the Applicant in making this application. Counsel for the Respondent referred me to the case of **Lawrence Muwanga** (supra) on this matter. I am afraid I am unable to get assistance from that case as it relates to the non payment of court fees. To my mind, the delay was explained, it was a procedural matter even though the Applicant bank has to take great care to avoid situations such as this.

As to the submission of the existence of a lien over the bus for non payment of fuel, there could be a point there. However, in such a situation, a lien would depend upon possession by the Respondent (definition of "lien" in **Osborn's Concise Law Dictornary** 6th Edition P. 204). In this case, there is no lien as such but rather an attachment before judgment by Order of the court.

That attachment on the authorities above is not safe and I therefore release the bus UAK 948T from attachment.

Given the background to this application and the equities involved, I find that it is just that each party bears its own costs.

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Geoffrey Kiryabwire
JUDGE

Date: 11/05/2011

11/05/11

Ruling read and signed in open court in the presence of:

- Mr. John Fisher Kanyemibwa for the Applicant

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John Ochepa Arutu
REGISTRAR MEDIATION

Date: 11/05/2011