

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-MA-824-2012

(Arising from Miscellaneous Application No. 687 of 2012)

(Arising from Miscellaneous Application No. 649 of 2012)

(All Arising from Civil Suit No. 367 of 2012)

KENSINGTON AFRICA LIMITED:.....:APPLICANT

VERSUS

- 1. STANBIC BANK (U) LTD**
- 2. SARAH NAMBASA**
- 3. PANKAJKUMAR HEMRAJ SHAH**
- 4. SAWAN PANKAJ ZAKHARIA:.....:RESPONDENTS**

BEFORE: HON. LADY JUSTICE HELLEN OBURA

RULING

The applicant brought this application under Article 128(2), (3), 50(2), 28(12), & 23(1)(a) of the Constitution of Uganda 1995, Section 98 of the CPA; Section 117 and 107(1) (d), (g) (1) and (3) of the Penal Code Act; Order 41 rr 2(3), rr 5 and rr 9 of the Civil Procedure Rules (CPR); Section 3 of the Judicature (Amendment) Act No. 3/2001 and Rules 3, 4, 6, 7 & 8 of the Judicature (Judicial Review) Rules, 2009 and all other relevant laws seeking for orders that;

1. The Managing Director of the 1st respondent and the 2nd respondent be arrested and detained in civil prison for contempt of court.

2. An Order doth issue directing the respondents to pay the applicant damages and compensation to the tune of UGX 500,000,000/= (Uganda Shilling Five Hundred million only).
3. An Order doth issue directing the respondents to pay a fine of UGX 500,000,000/= (Uganda Shillings Fifty Million only) to the Court.
4. A writ of sequestration doth issue appointing a sequestrator and attaching the salaries of the Managing Director of the 1st and 2nd respondents and properties of the 1st respondent for the sequestrator's management.
5. The respondents pay the costs of this application.

The grounds of this application are firstly that the applicant on 8/11/2012 obtained from this Honourable Court an Interim Order staying the Garnishee Proceedings, execution of the decree and Orders of the High Court Commercial Division Civil Suit No. 367 of 2012 till the disposal of the main application or until further orders of this Honourable Court. Secondly, that the respondents being the persons subject of the Interim Order have disobeyed it and are unilaterally continuing to block the applicant's accounts. Thirdly, that the respondents have refused to unblock the applicant's accounts despite requests from applicant's lawyers in total contempt of the Court Order. Lastly, that the orders are necessary for purposes of ensuring the applicant court protection and justice through a fair, free and uninterrupted trial and that the Orders are necessary for purposes of ensuring respect of this Honourable Court and enforcement of its Orders in achieving a fair and just disposal of the applicant's grievance.

The application was supported by an affidavit deposed by Jaimit Vasavada, the applicant's Finance Director. The respondents filed an affidavit in reply to oppose the application deposed by Mr. Peter Mukidi Walubiri, an advocate of the Courts of Judicature and Ms Sarah Nambasa, the 2nd respondent. The applicant also filed affidavits in rejoinder deposed by Mr. Akampurira Jude Baks, a lawyer working with M/s Akampumuza & Co. Advocates, the firm representing the applicant.

When this matter came up for hearing on 18/2/2013, Mr. John Musiime held brief for Dr. Akampumuza for the applicant, Mr. John Fisher Kanyemibwa represented the 1st and 2nd respondents while Mr. Bernard Bamwine represented the 3rd and 4th respondent. All the parties filed written submissions which I have considered in this ruling.

The background to this application is that on 20/9/2012 at the instance of the 3rd and 4th respondents, a default ex parte judgment was entered against the applicant in High Court Civil Suit No. 367 of 2012. The 3rd and 4th respondents then applied to the Registrar of this Court for execution of the decree by garnishee proceedings and a decree nisi was issued. On 31st October 2012 the 1st respondent was served with a garnishee order nisi in Misc. Application No. 649 of 2012 attaching the funds on the applicant's accounts held with the 1st respondent and requiring the 1st respondent to attend court on 9th November 2012 at 9:00am. Pursuant to the said order, the 1st respondent posted debit restrictions to the applicant's accounts to the extent of the sums indicated in the order.

On 8/11/2012 the applicant obtained from this Court an Interim Order staying the garnishee proceedings, execution of the decree and orders of the High Court Commercial Division Civil Suit No. 367 of 2012 till disposal of the main application or until further orders of the Court. This Order was served on the respondents on the same day it was issued. The applicant claims that the 1st and 2nd respondents in total contempt of the decree and orders in the above judgment wilfully and with intent refused to unblock the applicant's accounts hence this application.

In the written submissions the following issues were proposed for determination by the court:

1. Whether or not the respondents are in contempt of court.
2. If so, whether the contemnors should be punished for contempt of court and appropriate sanctions levied.
3. Remedies for the parties.

On the first issue, counsel for the applicant submitted that the respondents are in direct contempt of court as cited in the applicant's application. It was argued that the Interim Order issued by the Court and immediately served on the respondents has been openly defied rendering it nugatory. It was submitted that the 1st and 2nd respondents in total contempt of the decree and order of Court wilfully and with intent refused to unblock the applicant's accounts despite numerous requests from the applicant's lawyers attached as annexure B and C to paragraph 5 of the affidavit in support of the application. Annexures D and E to paragraph 6 of the

affidavit in support were regarded by the applicant's counsel as a clear manifestation of the 1st and 2nd respondent's defiance of the Court Order with impunity since they wrote that they are not ready to obey it.

The applicant's counsel went on to argue that by this conduct the respondents are acting in bad faith to defy the Interim Order of this Honourable Court to the applicant's prejudice. The other argument raised by the applicant's counsel was to the effect that the 2nd respondent in her reply alleged that the Interim Order stayed further garnishee proceedings contrary to the order. As to the definition of contempt of court and decision of court regarding the same, reference was made to the case of *Muriisa Nicholas v Attorney General Misc. Cause No. 35 of 2012* and *Stanbic Bank (U) Ltd & Another v The Commissioner General URA Misc. Application No. 42 of 2010* and *Housing Finance Bank Ltd & Another v Edward Musisi; MA No. 158/2010*.

In response, the 1st and 2nd respondents' counsel submitted that the 1st respondent obeyed the Interim Order. It was also submitted that the 1st and 2nd respondents did not state in their letter that "they were not ready to obey the court order." Counsel argued that the contents of paragraph 6 of the affidavit in support of the application were false because the above quoted words were not included in the 1st respondent's letters annexed as D and E to the affidavit. It was further submitted that the interim order stayed the garnishee proceedings which were scheduled for 9th November 2012 in furtherance of the execution of the decree pending hearing and determination of the main application.

Additionally, it was argued for the 1st and 2nd respondents that the suspension of the garnishee proceedings of 9th November 2012 did not mean that the earlier garnishee order nisi had been vacated. According to the respondent's counsel the interim order simply maintained the status quo. It was also the contention of the respondents' counsel that had the Court intended to vacate the earlier garnishee order nisi a specific order to the said effect would have been issued. It was further submitted that the proceedings which were scheduled for 9th November 2012 were "further garnishee proceedings" and there is nothing irregular for the 2nd respondent to refer to the said proceedings as such.

As to the legal effect of a garnishee order nisi, counsel for the 1st and 2nd respondents relied on the case of **Unique Holdings Ltd v Business Skills Trust Ltd Miscellaneous Application No. 402 of 2012** to submit that the charge created in favour of the judgment creditors under the garnishee order nisi was never discharged by the interim order but rather maintained until the determination of the application for stay of execution.

It was also submitted for the 1st and 2nd respondents that the provisions in the Interim Order staying garnishee proceedings meant Court recognized the garnishee proceedings had commenced and were continuing, but the Court suspended the continuation of the these proceedings which had been scheduled for 9th November 2012. The view taken by counsel for the first two respondents was that by implication the garnishee order nisi which had been previously issued and served on the 1st respondent was preserved by the Interim Order. He argued that had the Court intended to vacate the earlier garnishee order nisi a specific order to the said effect would have been issued.

As to the authorities relied on by the applicant, it was submitted that the ruling in the case of **Muriisa Nicholas v Attorney General (supra)** which defined contempt of court is not applicable to the respondents. Additionally, that the decision in **Housing Finance Bank Ltd v Edward Musisi (Supra)** does not describe the 1st respondent's action in relation to the Interim Order because the 1st respondent does not allege that the interim order was null, void or irregular as was the case in the said authority. Furthermore, that the decision was not applicable in the instant case because in the **Housing Finance Bank** case the Justices of Appeal described contempt of court as "*to disobey an order of court, or offer no explanation for non compliance to the issuing court, at any party's choice or whims, on the basis that such order is null or irregular, or is not acceptable or is not pleasant*" yet the 1st respondent notified the applicant's counsel and the court the reason why the debit restrictions were being maintained and court did not communicate a contrary position.

According to the respondent's counsel, the authority of **Soni Laxesh A. v Ismail Karmali & Payless Supermarket Ltd Misc. Application No. 75 of 2012** relied upon by counsel for the applicant is not applicable because the order in the said decision specifically required the respondent to release the applicant's passport and

academic documents but the respondent refused to do so. The case of **Stanbic Bank Uganda Ltd & Another v The Commissioner General URA (supra)** cited for the applicant was also stated not to be useful because the 1st and 2nd respondents have not uttered any words or done anything to impede or prejudice the course of justice as was the case in the said decision.

Counsel for the 3rd and 4th respondents on his part submitted that the respondents are not in contempt of court at all because the purpose of the Interim Order was to maintain the status quo until the hearing and determination of the main application, that is, Misc. Application No. 687 of 2012 which sought, inter alia, to set aside the decree and stay execution. It was argued for the 3rd and 4th respondents that the status quo as of 8/11/2012 was that the garnishee order nisi had froze the judgment debt at the bank and the bank would not proceed to pay the money out to the judgment creditors unless they received a garnishee order absolute and neither would the bank unfreeze the account unless the garnishee order nisi was discharged or set aside. The case of **Unique Holdings Ltd v Business Skills Trust (supra)** was also cited where Madrama J. analysed the execution rule under O. 23 of the CPR.

It was also submitted that if the interim order of stay had an effect of discharging the garnishee order nisi, it would render nugatory orders sought in the main application to stay or set aside execution of the decree. Furthermore, it was the view of the 3rd and 4th respondent's counsel that if the applicant wanted the garnishee order nisi vacated, set aside or discharged it would have applied for that specific order in its chamber summons but did not do so knowing that such an application was untenable at the stage of the proceedings.

In rejoinder, to the above submissions by the respondents, the applicant's counsel argued that the respondents by their submissions admit that they were aware of the order of the Court but chose not to implement it because "it was interpreted by the parties differently" meaning it was ambiguous or it was contradictory. He also maintained that the respondents had a duty to implement the orders of the Court or apply to the Court to make any clarifications or vary the orders or discharge them but not to wantonly defy them under the pretext that they were wrong.

Reference was made to the case of **Stanbic Bank (U) Ltd & Jacobsen Uganda Power Plant Company Ltd v The Commissioner General URA Misc. Application No 42 of 2010** where Mulyagonja J. underscored the importance of complying with Court orders and further quoted Romer L.J in the case of **Hadkinson v Hadkinson (1952) ALL ER 567** that disregard of an order of Court is a matter of sufficient concern, whatever the order may be. In the same case, Romer L.J had relied on the case of **Church v Cremer (1 Coop Temp Cott 342)** where it was held:-

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...it would be most dangerous to hold that suitors or their solicitors could themselves judge whether the order was null or void- whether regular or irregular, that they should not come to court and take (it) upon themselves to determine such question. That a course of a party knowing of an order, which was null or irregular and who might be affected by it, was plain....as long as it existed it must not be disobeyed...”

I have perused the pleadings and attachments thereto and carefully considered the submissions of counsel for the parties. It is the applicant’s case that the respondents disobeyed the interim order issued by the court while the respondents maintain that they obeyed the order as it was meant to stay garnishee proceedings rather than vacate the garnishee order nisi. Annexure A to the affidavit in support is the Interim Order. Paragraph 2 thereof states:

“An Interim Order is hereby issued staying the Garnishee proceedings, execution of Decree and Orders of the High Court Commercial Division Civil Suit No. 367 of 2012 till the disposal of the main application or until further orders of this Court”.

The respondents do not dispute being served with the Interim Order. However, the controversy is on its interpretation as regards its effect. The reason why the applicant sought the Interim Order was that there was an eminent threat of execution by making the decree nisi absolute. It is this threat that prompted the applicant to run to court a day before the garnishee proceedings slated to make the

decree nisi absolute. The application and the supporting affidavit plus the record of proceedings all clearly show that the Interim Order was intended to maintain the status quo pending hearing and determination of the main application for setting aside/stay of execution among other orders sought.

The effect of serving a garnishee order nisi on the bank was stated by Lord Denning in the case of **Choice Investments Ltd v Jeronnimon (Midland Bank Ltd, garnishee) [1981] 1 All ER 225** applied in **Unique Holdings Ltd v Business Skills Trust Ltd (supra)** in the following words;

“As soon as a garnishee order nisi is served on the bank, it operates as an injunction,...it binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment creditor. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged.”

In the instant case, the order was already in operation and the status quo as at the time of issuing the Interim Order was that all the applicant’s accounts had been attached. This is stated in both the chamber summons and the affidavit in support and argued by counsel for the applicant. The applicant thought that if not stopped, the respondents would go ahead and obtain a garnishee order absolute and consequently obtain the monies on the applicant’s account.

In view of the above facts, I agree with the respondents that it is not tenable that this Court could have preserved that status quo and at the same time vacated the garnishee order nisi by that very Interim Order. By preserving the status quo, the 1st respondent had no option but to keep the debit restrictions in place till further orders of court. In effect the interim order prohibited a further action being taken and there could only be contempt if any such further steps were taken. The 1st and 2nd respondents were therefore not expected to unfreeze the applicant’s accounts as this was the essence of the main application that was yet to be heard and determined on its merits. It would have been premature for the interim order to have the effect of freeing the applicant’s accounts in an *exparte* application when this was the essence of the main application. Contrary to what was stated by the applicant’s counsel in annexure “B” to the affidavit in support, that *“the stay meant that the person who had the decree nisi was stopped or refrained from*

enforcing it for the stated period”, the stay prevented the decree nisi from being made absolute and maintained the status quo until the determination of the substantive application.

In the premises, I do not find that annexures “D” and “E” to the affidavit in support manifested the 1st and 2nd respondents’ defiance of the Interim Order. The 2nd respondent rightly interpreted the order as stopping further garnishee proceedings because garnishee proceedings were supposed to continue but for the interim order. Based on the above analysis, I have difficulty in finding that the respondents disobeyed the Interim Order.

In the result, this application is devoid of any merit and it is accordingly dismissed with costs.

I so order.

Dated this 11th day of July 2013.

Hellen Obura
JUDGE

Ruling delivered in chambers at 3.00 pm in the presence of Ms. Akurut Irene who was holding brief for Dr. James Akampumuza for the applicant and Mr. Kizito Sekitoleko who was holding brief for Mr. Bernard Bamwine for the 3rd & 4th respondents. The 1st & 2nd respondents and their counsel were absent.

JUDGE

11/07/13