

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMMERCIAL COURT DIVISION**

**HCT-00-CC-CS-0007-2013  
(ARISING FROM CIVIL SUIT NO 0381of 2009**

**DAVESHAN DEVELOPMENT (U) LTD .....} APPLICANTS/ PLAINTIFFS  
DAVID GREENHALGH }**

**VERSUS**

**SHANITA NAMUYIMBWA }  
MEDDIE SENTONGO .....}.....RESPONDENT/DEFENDANTS**

**BEFORE HON. MR. JUSTICE MASALU W. MUSENE**

**RULING:**

The Applicants Devenshan Development (U) Ltd and David Greenhalgh filed this application against the Respondent, Shanita Namuyimbwa and Meddie Sentogo under Order 40 rules 5 and 6 of the Civil Procedure Rules.

The application by Chamber Summons was seeking orders of:-

- (i) Attachment of the Respondents/Defendants property before Judgment.
- (ii) Alternatively an order directing the respondent/Defendants to furnish security for production of property worth \$3.6 million.
- (iii) Costs of the Application.

The application was supported by the affidavit of the 2<sup>nd</sup> applicant, David Greenhalgh. Under paragraph (2) of the said Affidavit, he deponed that he has filed H.C.C.S. 381 of 2012 against the Respondents/Defendants jointly and/ or severally, seeking orders of recovery of a qualified sum of US\$ 3.6 million, an order for full disclosure, interest, general damages and costs. Under para (5) of the supporting affidavit he deponed that in the meantime the Respondents are poised to

disposing of by way of sale the whole of their property being real property as per attached list and that once that happens, the 1<sup>st</sup> Applicant shall suffer adversely as there may be nothing to attach in execution of the decree that may be passed against them.

The 2<sup>nd</sup> Respondent Meddie Ssentongo filed an affidavit in reply where under the deponed that the application discloses no cause of action against him as he has never dealt with the Applicants. Under paragraph (6), he deponed that the proceedings in the Anti-corruption case against him have no bearing on the present application. The 2<sup>nd</sup> Respondent also denied owning the list of properties listed or attached to the Application. The Applicants were represented by Mr. Patrick Furah, while the 2<sup>nd</sup> respondent was represented by Mr. Muhumuza and Mr. Isaac Walukaga. Mr Patrick Furah for the Applicants submitted that the 1<sup>st</sup> Respondent, Shanita Namuyimbwa has jumped bail as a convicted criminal and left Jurisdiction. While the 2<sup>nd</sup> Respondent is busy disposing of his property and/or registering the same into the names of his confidants with the intention of defeating the cause of Justice. And that unless the actions of 2<sup>nd</sup> Respondent are halted, the likely decree against the Respondents will be defeated.

Mr. Patrick Furah further submitted that evidence that the respondents are taking out both cash at Bank and real property to defeat justice came out in the testimony of 2<sup>nd</sup>. Applicant during cross-examination. Mr Furah challenged the cross-examination of counsels for 2<sup>nd</sup> Respondent, emphasizing that the cross-examination dwelt on ownership of some of the properties but did not contradict or cross-examine the 2<sup>nd</sup> Applicant on the contentious and crucial issue of disposal of property and cash at Bank by the 2<sup>nd</sup> Respondent, a convict and currently serving sentence at Luzira.

Mr Patrick Furah further submitted that during the cross-examination, it came out according to 1<sup>st</sup> Respondent's statement made in Luzira that most of the money drawn by the 1<sup>st</sup> Respondent from the 1<sup>st</sup> Applicant's account was passed on the 2<sup>nd</sup> Respondent, which was the finding of Justice Catherine Bamugemereire in the Anti-corruption Court Judgment. Mr Patrick Furah concluded by quoting from the judgement in criminal case No 102/2011 in the Anti-corruption case, **Uganda Vs Namuyimbwa and Meddie Sentongo**, which he concluded was the basis of the cause of action and likely decree against respondent, hence attachment before Judgment, and security to secure U.S.\$ 3.6 million.

Counsel for the 2<sup>nd</sup> Respondent on the other hand, submitted that there was no nexus between the applicants and the 2<sup>nd</sup> Respondent, Meddie Ssentongo. They further submitted that the Application lacks the necessary information regarding the ownership of the listed properties that is being sought to be attached and that the documents filed in court are not authentic. Counsel for the 2<sup>nd</sup> Respondent challenged the bundle of unlabelled documents addressed to the Registrar, which they argued were photocopies and contravene the Evidence Act. Counsel for the 2<sup>nd</sup> Respondent conceded that the 2<sup>nd</sup> Applicant met the 2<sup>nd</sup> Respondent and fell in love in the year 2009, and in 2010, the lover birds incorporated the 1<sup>st</sup> Applicant Company as Directors.

It was also submitted that the various properties mentioned belong to different people and that the applicants are speculators as far as ownership of the properties are concerned and therefore Application be dismissed.

Counsels for the 2<sup>nd</sup> respondent quoted the case of **Muginu Vs Basabosa (1999) HCB 71**. Before Justice Karokora as he then was, where it was held that there could be not attachment of property before Judgment which affect the rights existing prior to the attachment or persons not parties to the suit. Counsels for the 2<sup>nd</sup> Respondent also submitted that no certified extracts from the registrar of lands have been produced in court to confirm ownership of a host of the properties mentioned by Applicants as belonging to the 2<sup>nd</sup> Respondent.

This court has carefully considered the circumstances of this application for attachment before Judgement. In the first instance the fact that Respondents, Shanita Namuyimbwa and Meddie Ssentongo were charged in the Anti-corruption court under criminal case No. 102 of 2011 in connection with the money belonging to the 1<sup>st</sup> applicant company, Davenishan Development Company (U) Ltd is not disputed. Both of them were convicted and sentenced to imprisonment, only that the 1<sup>st</sup> Applicant, Shanita Namuyimbwa has jumped bail pending Appeal. This court will not delve into the details of that Judgment of the Anti-corruption court, but the fact that both Respondents were convicted of conspiracy to defraud reveals the nexus. The submissions by Counsel of the respondents that there is not nexus do not stand.

On page 32 of the Judgement of Justice Catherine Bamugemereire of the Anti-Corruption Court, she states:

**“PW4 also told Court that A2 asked for Advice on how they A1 and A2 should put to use the money as European (Muzungu) boyfriend intended to send. PW4 said he advised that they get into apartments and Hotel Construction business. Additionally the evidence of PW4, Tom Mukomazi was that A1 and A2 being boyfriend and girlfriend normally went travelling and clubbing with PW4 together on many occasion. The evidence of PW8 Kibuuka Henry Joel, personnel and executive Banker was that when A1 went to consult him on opening the Davenshan Company Account, she was in the company of A2.”**

The above passage from the Judgment of the Anti-corruption court reveals the nexus as A1 was Shanita Namuyimbwa and A2 was Medie Ssentongo, the Respondents in this case. And on the charge of conspiracy to defraud, the Judge in the Anti-corruption court concluded that since the evidence of PW2, PW4 and PW8 established that A1 and A2 enjoyed a close relationship, were several time and at the bank together and clearly pursued a Joint purpose, she found A1 and A2 guilty of the offence of conspiracy to defraud and convict them accordingly.

Before I take leave of this point, I wish to quote further from page 34 of the Anti-corruption Court judgment. Her Lordship held: “As we went through the analysis comparing drawings of the company account Davenshan Uganda Limited and the banking, we noted an interesting phenomenon when on 2.9.2010, Devenshan Developments Account was credited with one million nine hundred ninety nine thousand five hundred and eight US Dollars. On 15.9.2010, using bank account leaf 167155 Account the signatory to that company account withdrew a hundred and twenty thousand Dollars as noted earlier in cash. On the very same day 15<sup>th</sup> September, Medie Ssentongo personal Account in standard Chartered Bank Garden Cit branch was credited with shillings two hundred sixty nine million forty thousand.” The evidence of nexus is therefore over whelming in the circumstances.

The other issue in the submissions of counsel for the respondents was that the document compiled and tendered in by the Applicants contravened the evidence Act. However, no particular sections of the evidence Act alleged to have been violated was quoted. In any case, at this stage is not the hearing of the main case on the merits. All those nity grities of the evidence Act and other laws will come during the hearing of the main suit. At this stage, the court is concerned with evidence of whether the Respondent is about to leave the country (as the first

Respondent has already done by jumping bail), or whether the 2<sup>nd</sup> Respondent is trying or about to sell the property so as to obstruct or delay justice. And from the documentary compilation submitted by counsel for the applicants, the 2<sup>nd</sup> applicant has lodged caveats on most of the properties listed. Counsel for Respondent in their written submissions concedes that the documents filed in court are copies of caveats by the 2<sup>nd</sup> applicant. They only add that caveats were rejected but again there was no evidence of such rejection.

In the circumstances, in view of the nexus discussed above, this court will go ahead to issue the orders applied for as a way of re-enforcing the caveats, pending the outcome of the main case. In other words, no transactions or sell or transfer of the properties in question till the main case has been heard to find out the true position. Furthermore and as submitted by Mr. Patrick Furan for the Applicant, Counsel for the respondent during XXN of the 2<sup>nd</sup> applicant dwelt on the issue of Medie Sentongo's ownership of some of the listed properties. He did not touch on the Bank Accounts, namely Stanbic Bank (U) Ltd, A/c14003943501 in the names of Medie Ssentongo with Ugx 1,965,422,000/= Toyota Pickup styled and registered as Medie5, Ford Explore vehicle registered as Medie5 BMW6 Registration No UAP 304D, Range Rover Sport Registration No UAP 838L, Mercedes Benz registered and styled as Black Gal, Harrier Toyota and Mercedes Benz C2000 styled as Meddie5.

All those vehicles are to be impounded and not be sold or transferred till the main suit is finalised.

Lastly, on the pending appeal against the Judgment of the Anti-corruption case which is the basis of the main suit and this Application, there is no evidence of such pending appeal by Meddie Ssentongo before this court. The only inference from Newspaper reports is an appeal of Shanita Namuyimbwa who is said to have jumped bail granted by court of Appeal. But for purposes of this application, she has run out of the country, hence the need to allow the application. So all in all , and in view of what has been outlined, this court will allow the application and order that no action is taken in respect of the listed properties by way of sell or transfer to a third party till the main case has been heard. Costs be in the cause.

**JUDGE**

3. 4. 2013

Mr Patrick Furah for Applicants present.

Mr, James Muhumuza for Respondents present

Ojambo, Court Clerk present

**JUDGE**

Court: Ruling read out in open court

Hon. Justice W. M. Musene

**HIGH COURT JUDGE**

3. 4. 2013