

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

**HCMA NO 82 OF 2016**

**(ARISING FROM HCCS NO 30 OF 2016 AND HCMA NO. 963 OF 2-15)**

**CAR & GENERAL LTD}.....APPLICANT/OBJECTOR**

**VS**

- 1. UCHUMI SUPERMAKETS UGANDA}**
- 2. IMPERIAL HARDWARE LTD}**
- 3. ROBERT MUGABE}.....RESPONDENTS**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicant filed this application under the provisions of Order 22 rules 55, 56 and 57 of the Civil Procedure Rules as well as Order 52 rules 1 and 3 of the Civil Procedure Rules and section 98 of the Civil Procedure Act for the following orders namely:

- a. That the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) be released from attachment by the second and third Respondents following a court order extracted by Messieurs Kabayiza, Kavuma Mugerwa and Ali Advocates on 16 October 2015.
- b. In the alternative that if the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) has been disposed of by the second and third Respondents, an order be issued against the second Respondent for the repayment of US\$108,858 to the Applicant/Objector.
- c. That the costs of the application are provided for.

The grounds of the application are that the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) attached by the second and third Respondents under the court order is not the property of the first Respondent and therefore not liable for sale in satisfaction of the amount owed by the first Respondent who is the judgment debtor to the second Respondent.

Secondly the Applicant/Objector is the legitimate owner of the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) since the first Respondent never made any payment following its supply.

Thirdly the property is in the custody of the third Respondent on the instructions of the second Respondent.

The judgment debtor against whom the second and third Respondent levied execution did not have a proprietary or beneficial interest in the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197).

Fifthly it would be illegal and in contravention of the Objector's property right if the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) is not released from attachment.

Lastly it would be in the interest of substantive justice for this court to finally order the release of the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) to the Objector/Applicant.

The application is supported by the affidavit of Naveem Kumar Ramisetty, the General Sales Manager of the Applicant knowledgeable about matters in the application. He deposed that the first Respondent had been invited by the Applicant/Objector for a proposal to supply and install and commission a 500 kVA diesel generator plus automatic changeover switch at the Uchumi Gulu Uganda branch. On 15 January 2015 the Applicant/Objector in response submitted its proposal to the invitation giving all the specifications for the generator at an initial prize of US\$109,976. After negotiations on 20 March 2015 the first Respondent placed an LPO for the subject matter of the application. On 31 March 2015 and in response to the LPO the Applicant/Objector raised tax invoice for the amount of US\$108,858 for the supply of the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) according to a copy of the tax invoice attached to the application. On 11th of April 2015 the Applicant/Objector delivered the subject matter of the application at the first Respondent's supermarket located in Gulu. The same was installed on 14 April 2015 and commissioned according to the commissioning report attached to the affidavit. Payment was supposed to be made within 30 days following delivery, installation and commissioning and therefore it was supposed to have been effected on the 15<sup>th</sup> of May 2015. On 22 July following several demands by the Applicant/Objector a demand letter was written to the first Respondent requesting a sum of US\$108,858. The first Respondent did not respond to the letter which prompted the Applicant/Objector's legal representatives to write to the first Respondent seeking payment as earlier on demanded. On 12 August 2015 the Country Manager of the first Respondent one Gerald Chege responded acknowledging the supply of the

generator which remained unpaid for according to a copy of the letter attached. The first Respondent went into receivership wherein Messieurs Mungereza and Kariisa Certified Public Accountants were appointed representatives of the first Respondent. The Objector's General Manager approached the said firm of Certified Public Accountants wherein they were informed that the generator had been stolen by a certain client of the first Respondent and efforts were being made to recover it according to a copy of the e-mail attached. The legal representatives of the Applicant/Objector also wrote to the Certified Public Accountants to establish the identity of the suit property namely the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197). It was finally established that one Mr Prashant Goswami of Messieurs Imperial Hardware through his legal representatives Messrs Kabayiza, Kavuma, Mugerwa and Ali had secured an order through the High Court Land Division attaching the generator. Several efforts were made by the legal representatives of the Applicant/Objector and representatives of the first Respondent to retrieve the generator and the matter was even reported to Jinja road police station.

The second and third Respondents do not deny that they are in possession of the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) belonging to the Applicant/Objector. Furthermore the deponent repeats the grounds of the notice of motion.

The application was filed on 10 February 2016 and fixed for hearing today the 9<sup>th</sup> of March 2016 at 11 AM. The affidavit in reply on record is that of Mr Moses Oluoch, the General Security Manager of the first Respondent. He generally concedes that the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) belongs to the Objector and that the first Respondent had failed to make payment for the same. This was due to the financial constraints faced by the first Respondent. He further adds that the Objector had on previous occasions demanded the return of the generator but in vain. He attaches copies of letters and public notices to that effect.

When the application came for hearing Counsel Brian Tendo of Messrs OARS & BT Advocates appeared for the Applicant while Counsel Mercy Odu of Messrs AF Mpanga Advocates appeared for the first Respondent.

No one appeared for the second and third Respondents. I am satisfied that the second and third Respondents were served according to the affidavit of Christine Namwebe a court process server. She deposes that she served Messrs Kabayiza Kavuma Mugerwa and Ali advocates on the 17<sup>th</sup> of February 2016 but they refused to acknowledge service. The matter proceeded ex parte under Order 9 rule 20 (1) (a) of the Civil Procedure Rules. The Applicant's Counsel relied on the affidavit evidence presented in court and the laws cited and prayed that the application is granted as prayed for.

On inquiry by court as to whether the second prayer for US\$ 108,585 could be granted, he abandoned the prayer.

The application was made under Order 22 rules 55, 56 and 57 of the Civil Procedure Rules. Order 22 rule 55 deals with investigations of claims to and objections to attachment and provides as follows:

“55. Investigation of claims to, and objections to the attachment of attached property”.

(1) 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 the property is not liable to the attachment, the court shall proceed to investigate the claim or objection with a like power as regards the examination of the claimant or Objector, and in all other respects, as if he or she was a party to the suit; except that no such investigation shall be made where the court considers that the claim or objection was designedly delayed.”

The rule empowers the court to investigate the claim to attached property in execution of a decree. The prescribed ground under Order 22 rules 55 of the CPR for release of property from attachment is that the property is not liable to attachment. Why property may not be liable to attachment can be resolved by determining relevant questions of law or fact or mixed law or fact.

The Applicant has produced evidence that it is the owner of the property and that it was not paid for by the Respondent. The claim is supported by documentary evidence in the Affidavit of Naveem Kumar Ramisetty. The documents attached from annexure A, B, C, D, E, F G and H show that the Applicant intended to sell the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) to the first respondent. The generator was delivered in Gulu at the first Respondents branch and was to be paid for within 30 days. Payment was not effected and the matter became contentious. Annexure “H” and “I” are demand letters for US\$ 108,858 by the Applicant to the first Respondent. The first Respondent sought by annexure “J” for a meeting to resolve the matter on 12<sup>th</sup> of August 2015. By annexure “K and L” email and letter respectively the sale was rescinded and a demand made for the generator. The order of attachment was made on the 15<sup>th</sup> of October 2015. In my ruling there is evidence which has not been rebutted that the property remained that of the Applicant.

Order 22 rules 56 provides for the production of evidence by the claimant or Objector of his or her interest in the attached property at the time of the attachment. It provides that the claimant or Objector shall adduce evidence to show that at the date of the attachment he or she had some interest in the property attached.

The subject of inquiry of the court under order 22 rules 55 is to establish whether at the time of the attachment the claimant had some interest in the property attached. The interest involved or

which the claimant asserts in the Objector application for the protection of court must be an interest capable of legal protection. Does the application disclose prima facie an interest that enjoys legal protection? Order 22 rule 57 stipulates as follows:

“57. Release of property from attachment

Where upon the investigation under rule 55 of this order the court is satisfied that for the reasons stated in the claim or objection the property was not, when attached, in the possession of the judgment debtor or some person in trust for him or her, or in the occupancy of a tenant or some other person paying rent to him or her, or that, being in the possession of the judgment debtor at that time, it was not in his or her possession on his or her own account or as his or her own property, but on account of or in trust for some other person, or partly on his or her own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.”

Rule 57 makes it clear that the property at the time of attachment should be proved to the satisfaction of court not to be in possession of the judgment debtor or held or in possession of some other person in trust for the judgment debtor. The court is also to be satisfied that where the property is in possession or occupancy of a tenant, such tenant or other person was not paying rent to the judgment debtor or if the property was in the hands of the judgment debtor, it was in his or her possession not on his or her own account as his or her property but on account of or in trust for someone else. The court may also establish that the property was partially held on account of the judgment debtor and partially on account of someone else. The court has discretionary powers under Order 22 rule 56 of the Civil Procedure Rules and for purposes of establishing the matters spelt out under order 22 rule 57 to examine the claimant or Objector, in all other respects as if he or she were a party to the suit where the decree and warrant for attachment of the property was issued.

Upon satisfaction of the court that the property falls under any of the categories of property not liable to attachment listed under order 22 rules 57, it is mandatory that the property shall be released from attachment.

The inquiry and determination of the question whether to release the property from attachment or not upon investigation of the claim is a preliminary inquiry and upon establishment of the facts the orders of the court are dictated by either Order 22 rules 57 to release the property or Order 22 rules 58 of the CPR to disallow the claim.

The rules to release the property are based on prima facie findings of evidence and are not conclusive of the suit (See **Harilal & Company versus Buganda Industries Ltd [1960] 1 EA 318**, the Judgment of Lewis J about the scope of order 19 rule 55 and subsequent rules on what is to be investigated by court; **John Verjee and Another versus Simon Kalenzi, Court of Appeal**

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*~\*~?+: maXimum728securityx 2016 style*

**Civil Appeal NO 71 of 2000; C. Baguma v Highland Agricultural Export Ltd High Court Miscellaneous Application No. 655 of 2001).** The rules provide for a summary procedure of releasing the property from attachment or disallowing the claim and should the party aggrieved so desire, he or she may sue for a final determination of the question of ownership or who should have possession thereof under Order 22 rule 60 of the Civil Procedure Rules: Order 22 rules 60 provides as follows:

“60. Savings of suits to establish a right to attached property.

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.”

Rule 60 quoted above deals with a suit filed after an order has been made pursuant to Objector proceedings under order 22 rules 55, 56, 57, 58 and 59 of the Civil Procedure Rules, and may result in orders releasing the property with or without conditions or disallowing the claim and dismissing the application.

Where the aggrieved party against whom an order has been made does not institute a suit to prove his or her claim, the order of the court in the Objector proceeding becomes conclusive.

In the premises there is prima facie evidence that at the time of the attachment of the property by court order dated 15<sup>th</sup> of October 2015, the attached property namely the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) was the property of the Applicant.

In the premises the Cummins Diesel Generator Prime Power 500 kVA/400 KW (Generator serial number 114K745960 and Cummins Engine serial number 7976 7197) is released from attachment by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and shall be handed over to the Applicant /Objector with immediate effect.

The costs of this application shall be borne by the judgment debtor.

**Ruling delivered in open court on the 9<sup>th</sup> of March 2016 at**

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~?+: maXimum728securityx 2016 style*

Brian Tendo Counsel for the Applicant

Mr. Naveen Kumar Sales Manager

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**9<sup>th</sup> March 2016**