

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(EXECUTION AND BAILIFFS DIVISION)**

**CIVIL APPEAL NO. 10 OF 2016**

**(ARISING FROM HC MISC. APPLICATION NO. 205 OF 2016)  
(ARISING FROM MISC. APPLICATION. NO. 2030 OF 2016)  
(ARISING FROM MISC. APPLICATION NO. 2031 OF 2015)**

**COTTFIELD EAST AFRICA (U) LTD ..... APPELLANT**

**VERSUS**

**DHL GLOBAL FORWARDING (U) LTD ..... FIRST RESPONDENT  
BARCLAYS BANK (U) LTD ..... SECOND RESPONDENT**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

This appeal was brought under 0.50 r 8 C.P.R and S.98 CPA by the Appellant, seeking to set aside the garnishee order absolute issued by the Deputy Registrar on the 1<sup>st</sup> of October, 2015, attaching Shs. 36,029,747 and US Dollars \$15,600 on accounts numbers 6002261985 and 0241014088.

Costs of the application were also applied for.

The grounds of the application are that:-

- I) The Appellant was never served with the application for garnishee order nisi and garnishee order absolute, contrary to the rules of procedure and natural law.
- II) The Registrar perfunctorily made the Garnishee order absolute without directing his mind to the law.
- III) The Second Respondent though served with hearing notice for the First of October, 2015 did not attend court to offer an explanation as to why the funds on Bank Account No. 6002261985 should not be attached.

IV) The Second Respondent has also illegally denied the Appellant access to its funds on account No. 0244001262 using the same orders.

5 The appeal is supported by the affidavit of Joseph Daka Multi, which was read and relied upon at the hearing.

There is an affidavit in reply deposed by Allan Wamala, Counsel for the garnishee bank (2<sup>nd</sup> Respondent) and Rebecca Nakiranda for the First Respondent.

10 The Appellant also filed an affidavit in rejoinder.

The appeal was called for hearing on 25.08.16 in the presence of Counsel for the Appellant and Counsel for the Second Respondent; but in absence of the parties.

15 Counsel for the Appellant went through the orders sought in the appeal, the provisions of the law under which it was made and the grounds thereof.

20 He submitted that failure to serve the Appellant with the garnishee orders in execution was contrary to 0.23 r 1 C.P.R. which requires the judgment debtor to be served unless court directs otherwise.

25 He emphasized that the requirement is mandatory and is an essential step that must be observed by the Applicant and Court. And that the Judgment Debtor ought to be served either before or upon issuance of the order nisi because 0.23 r (1) C.P.R requires the Judgment Debtor to be examined and therefore the proceedings have got to be brought to the notice of the Judgment Debtor.

30 Referring to paragraphs 3,4,5 and 10 of the supporting affidavit and paragraphs 3 and 5 of the affidavit in rejoinder, Counsel insisted that the Appellant in the present case was never served.

35 That the Appellant got to know of the proceedings on 06.10.15 when checking on its account with the Second Respondent and found Account Number 0241014088 blocked. And upon inquiry were informed that the Second Respondent had been served with a garnishee order absolute by the First Respondent. The Appellant had never been served with the order nisi issued on 28.08.15. The orders were made absolute on 01.10.15 in absence of the Second Respondent who had been served.

40 Although the First Respondent claims to have served the Appellant with the garnishee order nisi on 30.08.15, the affidavit of service does not mention the person who was served, thereby raising issues as to whether there was proper service.

There is also no receiving stamp from the firm of Advocates and no signature acknowledging receipt.

45 The affidavit does also not state what efforts were made to ascertain the whereabouts of Counsel for the Appellant.

It was argued that whereas service on Counsel is effective service, there was no service at all or no effective service in the circumstances. The case of **Pribhai Lalji and Sons Ltd vs. Hashanah [1962] EA 306** was cited for the holding that **“purported services of that nature are not effective.”**

Counsel further submitted that **“non- service of notice to a party is of paramount importance because it touches on a constitutional right of a party to a fair trial”**. - Article 28 Constitution of Uganda.

It also touches on the rules of natural justice which are intended to secure for parties fair and just treatment before bodies where they appear, Counsel argued.

The rule of natural justice includes the right to be heard and the right to prior notice, that is, adequate and reasonable notice. – **Peter Kama on Judicial Review Law, Procedure and Practices Cap 6 pp141-144** was relied upon in support.

The cases of **Deyalji Jerani Galfar vs. Kampala District Land Board and Sebaana Kizito [2005] KALR P. 600 -607-** by Justice Bamwine and **Uganda Pentecostal University Ltd vs. NCHE and Attorney General [2005] KALR P. 585-600** were also referred to.

Reiterating that the Appellant was condemned unheard, Counsel asserted that execution proceedings including orders emanating from them, given without prior notice to the Judgment Debtor or his/her legal representative are null and void abinitio because they are an illegality.

Counsel then cited several of the cases including **Wangson Industries Ltd vs. Sterling Ltd [2007] KALR P. 464-474** were the case of **Muluka International Ltd vs. Cardinal Nsubuga [1982] HCB 12** was relied upon, to state that **“A court of law cannot sanction what is illegal. And an illegality once brought to the notice of court overrides all questions of pleading including any admissions made therein”**.

He added that **“where an error has been committed in the administration of justice, it must be put right in the interest of the aggrieved party”**.

The Deputy Registrar acted without due regard to the law, Counsel asserted. And that since the Second Respondent was served with both garnishee order nisi and absolute and did not appear for the order absolute, it is presumed that liability was admitted. And therefore the Registrar ought to have ordered execution against the Bank and not against the Appellant, under 0.23 r 2 C.P.R.

That therefore, the Appellant is entitled to have the order absolute recalled by way of appeal – **Dawson vs. Preston [1958] 3 AU SRP 314 at P/316**.

Further that, this court is a First Appellate Court with jurisdiction to interfere with orders of the trial court if satisfied that there was misdirection in a matter by the lower court as a result of which a wrong decision was reached. Or where it is manifestly evident from the case as a whole

that the trial court was clearly wrong in exercising its discretion and there was failure of justice.  
– **Banco Arabic Espanol vs. Bank of Uganda [1999] KALR 354 -378** cited.

5 Ground three (3) was then abandoned on the ground that the Account was released as it did not belong to the Appellant.

10 In respect of ground 4 it was stated that the Appellant was denied access to its funds on account number 0244001262 – which had not been mentioned in any of the garnishee orders that had been served upon it, and the Second Respondent then paid out the money from that account.

15 The money, Counsel contended, was paid out when there was a subsisting order of stay of execution granted by the Hon. Judge in this Application No. 2707/15 but the Second Respondent paid out the money from the account on 27.11.15. And that this was intended to defeat the application for stay of execution that was to be heard on 30.11.15.

15 That all those actions were illegal and ought to be set aside.

20 It was prayed that the appeal be allowed and all orders and consequential actions done in pursuance thereof set aside. And costs of the appeal granted to the Appellant.

25 In reply, Counsel for the First Respondent referred to the affidavits in support and submitted that, it is alleged there was a pending appeal against the taxation award and the decree and execution proceedings ought not to have commenced. Also that there was an interim order. But still an appeal does not act as a stay of proceedings and therefore the First Respondent had power to execute the decree and realize the fruits of judgment.

Secondly that, no evidence or the interim order of stay was ever attached by the Appellant and there was no such order.

30 Also that 0.23 r 1 (1) C.P.R does not oblige the Chamber Summons to be served on the Judgment Debtor, as it says that “**Court may**”

35 Counsel argued that the application is always ex parte and there is no need to serve the Judgment Debtor. That therefore ground one (1) fails.

40 That the alleged non service of the order nisi cannot be sustained as Annexure A to First Respondent’s affidavit in reply paragraph 5 indicates that service was effected on a person at the reception of Counsel for the Appellant’s chambers. The order nisi was left there. The affidavit of service was filed immediately thereafter on 21.08.15 and cannot be said to be an afterthought.

45 In respect of the non service of the order absolute, it was contended that there is no law and none was cited that requires service of the order absolute to the Judgment Debtor. The order is only served on the garnishee, who was served in this case and who should have transmitted it to the Appellant- Annexure C, First Respondent’s affidavit in reply.

In respect of ground 4 – it was submitted that the issue is who is the aggrieved party? It is the Account owner which should institute a separate suit against the party who wrongfully attached the account. And since there is no evidence of such a suit anywhere, the matter cannot be resolved in the present application seeking to set aside the garnishee proceedings.

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It was pointed out that the money was paid to the First Respondent pursuant to contempt of court proceedings between the First Respondent and Second Responded. The trial Judge found the Second Respondent in contempt for refusing to pay the First Respondent; and directed the Second Respondent all such moneys as were on the accounts of the Judgment Debtor (Appellant) as of 19.08.15.

10

The Second Respondent did not appear when the order nisi was made absolute and under 0.23 r 3 C.P.R, Court had the discretion to order execution, which it did.

15 Further that, courts have held that ***“garnishee order absolute may only be set aside on specific grounds”***. – See **Unique Holdings Ltd vs. Business Skills Trust Ltd Miscellenous Application 402/12.**

20 Asserting that the garnishee proceedings were proper as all procedures were followed, Counsel stated that the Appellant has opportunity to appeal to recover all moneys paid out. He prayed for dismissal of the appeal with costs to the First Respondent, adding that the costs should be paid by Counsel.

25 For the Second Respondent, the submissions were restricted to points of law, which Counsel felt could dispose of the appeal.

30 Counsel pointed out that the appeal was made under 0.50 r 8 C.P.R which concerns appeals against orders of the Registrar. However, that in the present case, the appeal is against a decree absolute, where under S.2 CPA an order is a formal expression of a Civil Court that is not a decree.

35 That this appeal is against the decisions of the Registrar and not against the propriety of the execution proceedings which is strange as such decisions can only be challenged under S. 34 CPA.

The section provides for questions to be determined by court executing the decree. And therefore the matter ought to have been handled with the garnishee order absolute or the contempt of court proceedings. – The case of **Francis Micah vs. Nuwa Walakira SCCA 24/94** was relied upon.

40 It was further submitted that, the Appellant instead of filing this appeal ought to have filed a Miscellenous Application arising out of the contempt of court proceedings or garnishee proceedings.

45 Also that the Second Respondent froze the accounts of the Judgment Debtor after the contempt of court proceedings against it. The proceedings before Justice Muhanguzi directed the Second

Respondent to satisfy the debt or the officials would be arrested. And it is on that basis alone that payment was made.

5 If the appeal is allowed, it will have the effect of setting aside the decision of another Judge of the same jurisdiction.

10 Counsel insisted that an appeal against execution is not envisaged anywhere in the law. The law under which the appeal was brought does not apply and the Appellant ought to have appealed to a higher court.

And that there should be an end to litigation with the same court so as to let the Judgment Creditor enjoy the fruits of a judgment. – See **Kiiza Walusimbi Blasio and 2 Others vs. Senyimba Charles and 3 Others C.S 248/2011 P.6.**

15 Without prejudice to the foregoing submissions, Counsel for the Second Respondent argued that the Second Respondent did not have any legal duty to serve the decree nisi on the Judgment Debtor. 0.23 r 1 (3) C.P.R is silent on who should serve decree nisi. If the law intended it to be the garnishee, it would have expressly stated so.

20 Otherwise, the duty of a garnishee in execution proceedings is to satisfy itself that the Judgment debtor has accounts in its Bank and there is money on the accounts. And when there is money on the accounts, the only duty of the garnishee is to pay and that is what happened.

25 That non appearance of the Second Respondent for the garnishee absolute does not affect the execution in any way as the money belongs to the Judgment Debtor (Appellant) and not the garnishee.

30 The ways of compelling the garnishee to under 0.23 C.P.R had already been gone through. Therefore the Appellant had not proved failure to comply with any law on part of the Second Respondent.

Contending that the Appeal is misconceived, Counsel applied for its dismissal with costs.

35 In rejoinder, it was argued for the Appellant that the Appeal is properly before court. 0.50 r 8 C.P.R provides for appeals against orders of a Registrar to a Judge and does not exclude orders made in execution. If that had been the intention of the legislature, it would have been clearly stated.

40 That under S.2 CPA- meaning of order includes orders nisi and absolute.

A decree is different from an order. Decree is from a judgment, order is from ruling.

45 S. 34 CPA provides that all matters relating to execution are to be resolved by the court that carried out execution.

The Registrar is a Registrar of the High Court, where the Second Respondent came to enforce judgment, therefore the court is proper.

5 Appeals from orders of the Registrar is not direct to the Court of Appeal. Rules enjoin appeal to High Court.

The appeals referred to by the Respondents do not arise out of contempt of court proceedings or Commercial Division proceedings.

10 The order in the contempt of court proceedings relied upon to pay from the account ordered execution against the Second and Third Respondents and not against Barclays Bank.

15 Secondly that, the order should be read together with the garnishee orders which court referred to separately.

And that the authorities cited by the Second Respondent do not apply to this case. Counsel then reiterated earlier prayers.

20 The issues for court to determine are whether:-

**1) The appeal is properly before court, if so**

**2) Whether the appeal should be allowed**

25 After hearing the submissions of all Counsel, going through the authorities relied upon by the parties and giving them all the best consideration I can in the circumstances, I find that I need not go through all the issues raised by this appeal.

30 It is apparent that the moneys of the Appellant were paid out to the First Respondent by the order of the Judge in Miscelleneous Application 2579/2015. This was after the garnishee proceedings the Appellant seeks to set aside had been rendered useless by the Appellants withdrawals of the money from the garnisheed account and transferring it to a personal account.

35 The garnishee proceedings were overtaken by events when contempt proceedings were held against Second Respondent and its officers and the officers of the Bank were directed to pay to the First Respondent all such monies as were on the accounts of the Appellant as of 19.05.15 on failure of which they would be brought before court for contempt.

40 The funds had been removed after Garnishee Order Nisi had been issued to the Second Respondent on 20.08.15.

45 The Garnishee Order Nisi was made absolute on 01.10.15. - Court has the discretion to serve the garnishee orders on the Judgment Debtor as the rules clearly state “**may**” otherwise the garnishee proceedings are essentially between the Judgment Creditor and the Garnishee Bank. To allow this appeal by setting aside the garnishee order absolute would amount to setting aside

the order of another Judge with the same jurisdiction as this court, which I have no powers to do. The appeal fails on that ground.

5 Court also wishes to further observe that while Counsel for the Second Respondent contended that the appeal had been brought under the wrong provisions of the law, that submission was not sustainable. Court have consistently held that citing a wrong law is not by itself sufficient to nullify proceedings as the right law can always be cited.

10 Further, if the Appellant feels that the Bank wrongly paid out the money, then a suit can be filed against the Bank to recover the money or pursue the alleged appeal.

15 The Appellant contends that the money was paid out when an appeal was pending. An appeal does not necessarily act as a stay of execution and there is nothing to indicate that the Appellant has pursued the appeal. If the Appellant pursues the appeal and court finds that the money was wrongly paid out, then the Appellant will stand to recover it from the First Respondent.

The appeal is dismissed for those reasons with costs to the Respondents.

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**Flavia Senoga Anglin**

**JUDGE**

**03.05.17**