

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

**MISCELLANEOUSAPPLICATION NO. 502 OF 2018**  
**(ARISING FROM MISC APPLICATION NO. 427 OF 2018**  
**(ARISING FROM CIVIL SUIT NO. 256 OF 2018)**

**KAHSAY & SONS GENERAL TRADING:::APPLICANT**  
**VERSUS**  
**GOLDMINE FINANCE LIMITED**  
**MWESIGYE CORNELUIS RAMPRAKAS:::RESPONDENTS**

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**R U L I N G:**

Kahsay & Sons General Trading the Applicant in these proceeding filed this Application against Goldmine Finance Limited and Mwesigye Cornelius Ramprakas the Respondents herein seeking the following orders;

1. That court review its Ruling and orders in Misc. Application No. 427 of 2018 to the extent to which it relates to the Applicant's containers of sugar that are currently loaded on vehicles Reg No. UAS 715Q/ SSD 280G, UAU 507N/UAQ 854C,UAH 365H/UAD234Q.
2. The aforesaid order be varied to release the said vehicles herein above and containers of sugar from attachment as well as costs.

The background to this application as discerned from the pleadings is that the second Respondent imported sugar into Uganda. He sought and obtained a loan from the 1<sup>st</sup> Respondent of USD 73,320 to clear customs and Storage fees.

The goods arrived in the country and were cleared for re-export.

The 1<sup>st</sup> Respondent demanded for the money he had lent the 2<sup>nd</sup> Respondent who declined to pay citing non-accountability by the 1<sup>st</sup> Respondent.

On 3<sup>rd</sup> April 2018 the 1<sup>st</sup> Respondent sued the 2<sup>nd</sup> Respondent together with Maria Goreti and Serumaga Ishaq seeking to recover USD 73,320 as special damages, interest at commercial lending rates, general damages and costs arising from breach of the financing agreement.

Unknown to the 1<sup>st</sup> Respondent, the second Respondent sold the sugar to the Applicant on the 24<sup>th</sup> May, 2018.

The Applicant effected payment through KCB on 25<sup>th</sup> May 2018 and 28<sup>th</sup> May 2018.

On the 30<sup>th</sup> May 2018, Uganda Revenue Authority allowed and released the Goods to the 2<sup>nd</sup> Respondent for re-export with the 2<sup>nd</sup> Respondent now the exporter and the Applicant as the consignee.

On receiving information that the 2<sup>nd</sup> Respondent had sold the sugar and that five out of the eight containers had already been taken, the 1<sup>st</sup> Respondent filed Miscellaneous Application 427 of 2018 seeking the orders;

1. That the property of the Respondents/Defendants comprised in a Consignment of Goods under Airway bill number BKK 701165600 (Bags of sugar) currently stored at Multiple ICD be attached before hearing and delivery of judgment in the head suit HCCS No. 256 of 2018 against the Respondents/Defendants.

2. That a warrant of arrest issues against the Respondents to show cause why they should not furnish security for their appearance in the referenced civil suit.

The Application was fixed for hearing the result of which the Learned Registrar stayed the removal of the remaining sugar. On the 14<sup>th</sup> June 2018 he ordered;

1. The remaining 3 containers may be released upon the Respondents depositing USD 40,000 with Court.
2. The Respondents are hereby directed to deposit with Court USD 33,200 or any sufficient security in lieu thereof, within 14 days!

I would like at this stage to point out that it was counsel for the 2<sup>nd</sup> Respondent who sought 2 days to deposit the USD 40,000.

That the sugar was sold to the Applicant is not in dispute. The Applicant was innocent of any problems attached to the goods. The release and re-export issued by Uganda Revenue Authority naming the 2<sup>nd</sup> Respondent as the exporter and the Applicant as the consignee must have assured the Applicant that all was well. In these proceedings the Applicant is seen as an innocent purchaser.

Furthermore, in the suit 256 of 2018, the 1<sup>st</sup> Respondent simply seeks the recovery of the money he lent.

Going by the plaint, there was nothing to show that the sugar was lien at all. Furthermore the sale was done and finished before the court ordered the attachment.

If there was any lien it had changed shape in the context of this case and could no longer hold because “in the position of the parties, and the circumstances of this case, the new position was inconsistent with the future continuance of the lien.” ***Hill and Sons vs. London Central Markets Cols Storage Company Ltd (1910) 102 LT 775.***

It is now clear from submission that the transporters' trucks are stuck with the sugar on them at a cost that increases every passing day.

It is also clear that the Revenue Authority will anytime now impound the sugar, have it forfeited and sold as an import that has not complied with the tax requirements. In such a situation everyone stands to lose, much so the Applicant who is and never was privy to the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. Since there is no doubt that the Applicant bought the sugar before the court injunction, the order of stay preventing the Applicant to access the sugar is set aside.

The sugar be released to the Applicant.

For the avoidance of doubt the above order does not absolve the 2<sup>nd</sup> Respondent of any damages that the Applicant may prove should he wish to lodge any claims.

Turning to the Respondents, it is not in dispute that on the 12.06.2018 the 2<sup>nd</sup> Respondent, and the others namely Maria Goreti, and Serumaga Ishaq through their lawyers undertook to deposit USD 40,000 in Court within two weeks.

The Respondents again on 8<sup>th</sup> June, 2018 asked for four days to deposit the money which the Court granted.

On the 3<sup>rd</sup> July 2018 the 2<sup>nd</sup> Respondent did not appear and his mother who is the 2<sup>nd</sup> Defendant in the suit told Court that the 2<sup>nd</sup> Respondent had got the money less by 3000 US Dollars and had gone to Kasese to bring it. Todate the 2<sup>nd</sup> Respondent has not brought the money.

It is now clear that the three Respondents Mwesigye Cornelius, Mariam Goreti and Serumaga Ishaq have no intention of depositing the money.

The sugar would have been the only security but at the time they undertook to deposit the money they had already sold the sugar.

It is clear from the record that the Applicant paid money to the 2<sup>nd</sup> Respondent.

It is also the 2<sup>nd</sup> Respondent's statement that he sent the money out of the country.

By that action, he removed from the local limits the proceeds of the sale. His behavior of staying away from Court raises suspicion that he may abscond or behave in a manner that would delay these proceedings.

The 2<sup>nd</sup> and 3<sup>rd</sup> who are Respondents in Misc. Application 427/2018, told Court that the 2<sup>nd</sup> Respondent in Misc. Application 502/2018 had the money but was topping up with 3,000 US Dollars before he pays. By doing so they misinformed the Court, which in my view was intended to derail this process.

Considering the conduct of the three Mwesigye Cornelius, Mariam Goreti and Serumaga Ishaq, considering also that this Court has ordered the release of the sugar to the Applicant, this Court finds this a fit and proper case wherein it calls upon the three to furnish security totaling USD 73,200 as order of Court on 14<sup>th</sup> June 2018.

Warrants doth issue to arrest all the three hereinabove named, bring them to Court to show cause why they should not be committed to Civil Prison under Order 40 rule 4 of the Civil Procedure Rules in default.

The 2<sup>nd</sup> Respondent shall bear the costs of this application.

**Dated at Kampala this 11<sup>th</sup> of July 2018**

**HON. JUSTICE DAVID WANGUTUSI  
JUDGE.**