THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION No. 0891 OF 2021

(Arising from Civil Suit No. 0419 of 2021)

PETROCITY ENTERPRISES (U) LIMITED …….……. APPLICANT

VERSUS

1. **MOTA-ENGIL ENGENHARIA CONSTRUCAO SA }**
2. **UNIWORKS TRANSPORTERS AND LOGISTICS LTD } …. RESPONDENTS**

Before: Hon Justice Stephen Mubiru.

RULING

Background.

The applicant instituted a suit against the respondents jointly and severally under summary procedure seeking recovery of shs. 2,142,574,468/= The applicant's claim is that at all material time the 2nd respondent was a sub-contractor of the 1st respondent, retained to supply borrow pit materials required for the construction of the Kampala Northern Bypass. For purposes of the said sub-contract, the 2nd respondent entered into an agreement with the applicant for the supply of fuel on credit, for its trucks. Payments by the owner of the project, Uganda National Roads Authority (UNRA) to the 1st respondent being irregular, the 2nd respondent was unable to meet its obligations to the 1st respondent in a timely manner. This prompted the applicant to enter into an arrangement requiring the 2nd respondent to meet its contractual obligations to the 1st respondent from its own resources. Consequently, the 2nd respondent was to issue its invoices directly payable by the applicant. At a meeting convened on 14th April, 2021 for the reconciliation of accounts in order to establish the money due to the applicant, it was established that the applicant was owed shs. 4,483,000,000/= It was agreed that the entire amount would be paid by the end of May, 2001. The respondents have since then paid shs. 2.340.425.531.91 leaving shs. 2,142,574,468/= due and outstanding, hence the suit. The respondents have since filed an application for unconditional leave to appear and defend the suit, which application is still pending disposal.

b. The application.

The application is made under Order 40 rules 2, 5 and 12 of *The Civil Procedure Rules*. The applicant seeks four orders, namely; (i) that the respondents be required to show cause why they should not deposit shs. 2,142,574,468/= as security for their appearance; (ii) and order of attachment before judgment for recovery of that amount be issued pending the disposal of the suit; (ii) that sum be deposited in court until the final disposal of the suit; and (iv) the costs of the application be provided for. The grounds for seeking the orders are that the 1st respondent is a foreign corporation and together with the 2nd respondent do not have any known assets in Uganda against which recourse may be had for the recovery of that sum in the event that judgment is entered in favour of the applicant. The 2nd respondent is heavily indebted to a bank and other creditors. In the meantime, the 2nd respondent has stopped the 1st respondent from paying the applicant's invoices directly, contrary the understanding of 14th April, 2021.

c. The affidavits in reply

The 1st respondent's affidavit in reply sworn by its Managing Director Mr. Mauro Ventura, refutes the applicant's claim. The 1st respondent has no contractual obligation owed to the applicant. It is by the 2nd respondent's letter dated 1st June, 2020 that the 1st respondent was asked to pay money due to the 2nd respondent under the sub-contract, directly to the applicant as one of the 2nd respondent's creditors. The 1st respondent made a number of payments of the undisputed amounts in the credit arrangement between the applicant and the 2nd respondent. Subsequently the 2nd respondent wrote a letter restraining the 1st respondent from paying the applicant directly. At the same time the 1st respondent realised it had overpaid the 2nd respondent under the sub-contract and stopped further payments. The 2nd respondent has since instituted a suit against the 1st respondent alleging breach of the subcontract, seeking to recover special and general damages. The 1st respondent has counterclaimed for breach of contract. Although the 1st respondent is a foreign corporation, it is running a number of construction projects in Uganda under multiple contracts that still have years to run. Foe purpose of executing those contracts, it has assembled in Uganda an incredible amount of plant, machinery and equipment. Therefore there is no basis for making any of the orders sought.

The 2nd respondent's affidavit in reply sworn by its Managing Director Mr. Nathan Mwesigye Rubangura, too refutes the applicant's claim. The 2nd respondent contends that by a memorandum of understanding between it and the applicant dated 9th December, 2019 it was established that the 2nd respondent owed it an undisputed amount of only shs. 1,157,000,000/= The applicant was asked to provide documentation verifying the rest of its claim. The 2nd respondent nevertheless has since then made additional payments to the applicant as a result of which the total amount paid stands at shs. 3,871,814,192/= The applicant was on 21st May, 2021 asked to provide the necessary documentation for purposes of a final reconciliation of its claim but has not responded to-date. This prompted the 2nd respondent to restrain the 1st applicant from making further payments directly to the applicant. The 2nd applicant was never party to the reconciliation of 14th April, 2021 between the 1st respondent and the applicant. It is not bound by that position and I has since filed a suit against the 1st respondent for breach of the sub-contract. The 2nd respondent is not heavily indented as alleged and being signatory to the 2nd respondent's account through which all funds payable under the sub-contract are made, it is not true that the applicant has no recourse in the event of a judgment in its favour. Therefore there is no basis for making any of the orders sought.

d. <u>The affidavits in rejoinder</u>

In the applicant's affidavits in rejoinder it is contended that the 2nd respondent assigned all debts accruing due to it from the 1st respondent within a period of six months of the signing of the memorandum of understating. By restraining the 1st respondent from paying the balance of the undisputed amount, the 2nd respondent intends to divert the funds to its other creditors. The 2nd respondent's affidavit in reply is defective for not having been signed in the presence of a commissioner for oaths. The memorandum of 9th December, 2019 is a forgery and in any event it related to a debt that accrued in the year 2018. The amount invoiced giving rise to the undiluted claim of shs. 4,483,000,000/= pursuant to the reconciliation of 14th April, 2021 related to supplies made during the period of six months assigned to the applicant by the 2nd respondent. The 2nd respondent's officers participated in the process of verification of that amount. Although the applicant's director is signatory to the 2nd respondent's account through which all funds payable under the sub-contract are made, the 2nd respondent is financing big overdrafts on the account. It therefore true that this is not a viable recourse in the event of a judgment in its favour.

e. Submissions of counsel for the applicant

Counsel for the applicant, M/s Ntambirweki Kandeebe and Co. Advocates, submitted that the order sought are intended to prevent the respondents from making attempts to evade and defeat the decree that may be passed against them. The 2nd respondent's letter restraining the 1st respondent from paying amounts due to it directly to the applicant as per the earlier arrangement is *prima facie* evidence of an attempt to evade or delay the course of justice. Unless the measure south are granted, the applicant will have no alternative recourse since the 2nd respondent is heavily indebted to other creditors. The 2nd respondent's affidavit in reply is defective for not having been signed in the presence of a commissioner for oaths. When the 1st respondent received instruction to pay the applicant directly, the 2nd respondent assigned all its rights to the applicant in respect of that part of the debt. The 1st respondent is bound by its part performance of the instruction and thus a necessary party to the proceeding. The 2nd respondent's suit against the 1st respondent alleging breach by failure to make timely payments to the applicant as per its instructions is misconceived since it assigned that part of its debt to the applicant.

f. Submissions of counsel for the respondents.

Counsel for the 1st respondent, M/s Angualia Busiku and Co. Advocates submitted that the purpose of the orders sought is to prevent a litigant from evading the course of justice and a decree that may be passed against him or her. The applicant has not shown any intention on the part of the 1st respondent, of evading the course of justice and a decree that may be passed against it. There is no evidence to show that the 1st respondent is likely to leave jurisdiction or has begun disposing of its assets for that purpose. The 2nd respondent has filed an application of unconditional leave to appear and defend the underlying suit. Attachment of its assets of funds before judgment will greatly prejudice the 1st respondent which has multiple ongoing contractual obligations under major construction projects with the Uganda National Roads Authority (UNRA). The payments made directly to the applicant were upon request of the 2nd respondent, who has since then revoked that request. The 1st respondent has no contract with the applicant yet there is a dispute between the applicant and the 2nd respondent as the amount due. The 2nd respondent has since filed a suit against

the 1st respondent against which the latter has filed a defence denying indebtedness to the 2nd respondent but is instead counterclaiming for breach of contract.

Counsel for the 2nd respondent, M/s Jambo and Co. Advocates submitted that the purpose of the orders sought is to prevent a litigant from evading the course of justice and a decree that may be passed against him or her. The applicant has not shown any intention on the part of the 2nd respondent, of evading the course of justice and a decree that may be passed against it. There is no evidence to show that the 2nd respondent is likely to leave jurisdiction or has begun disposing of its assets for that purpose. To the contrary, the 2nd respondent has filed a suit against the 1st respondent seeking recovery of an amount far beyond that claimed by the applicant. There has never been a reconciliation of accounts between the 2nd respondent and the applicant. No proof of indebtedness by the 2nd respondent to other creditors has been furnished. The applicant's director being signatory to the account into which the 2nd respondents funds are payable is a guarantee that the 2nd respondent does not have the capacity to deal with the funds in a manner intended to evade the course of justice or a decree that may be passed against it.

g. <u>The decision</u>.

Although the application *inter alia* seeks an order directing the respondents to show cause why they should not deposit shs. 2,142,574,468/= as security for their appearance to defend the suit filed against the two of them under summary procedure, having categorically stated in the application that it is one brought under Order 40 rules 2, 5 and 12 of *The Civil Procedure Rules*, the applicant in essence seeks an order of attachment before judgment. The authority of court to make such an order is provided for by section 94 of *The Civil Procedure Act* as well as Order 40 rule (1) of *The Civil Procedure Rules*. Section 94 of *The Civil Procedure Act* provides a follows;

> In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed;-
>
> (a) issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not give security for his or her appearance, and if the defendant fails to comply with any order for security commit him or her to prison;

(b) direct the defendant to furnish security to produce any property belonging to him or her and to place the same at the disposal of the court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his or her duties by attaching and selling his or her property;

(e) make such other interlocutory orders as may appear to the court to be just and convenient.

On the other hand, Order 40 rule (1) of *The Civil Procedure Rules* provides as follows;

> Where at any stage of a suit, other than a suit of the nature referred to in section 12 (a) to (d) of the Act, the court is satisfied by affidavit or otherwise: -
>
> (a) that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him or her—
>
> (i) has absconded or left the local limits of the jurisdiction of the court;
>
> (ii) is about to abscond or leave the local limits of the jurisdiction of the court; or
>
> (iii) has disposed of or removed from the local limits of the jurisdiction of the court his or her property or any part of it; or
>
> (b) that the defendant is about to leave Uganda in circumstances affording a reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security for his or her appearance.

The object of section 94 of *The Civil Procedure Act* and Order 40 rule (1) of *The Civil Procedure Rules* is to prevent any defendant from defeating the realisation of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his movables. The conditions that must be satisfied under section 94 (b) of *The Civil Procedure Act* are similar to those required under Order 40 rule (1), to wit;- the applicant should show, *prima facie*, that his or her claim is bonafide and valid and also satisfy the court that the respondent is about to remove or dispose of the whole or part of his or her property,

with the intention of obstructing or delaying the execution of any decree that may be passed against him or her, before power is exercised.

Whether the respondents will have sufficient assets at the end of a trial to fully satisfy any judgment that may be obtained is a pertinent consideration both for the applicant and court. The last thing a litigant wants to do is to incur expenditure on litigation only to receive a paper judgment that cannot be satisfied. A plaintiff though is not normally entitled to secure assets in advance to ensure that they will be available to satisfy a judgment that may not come for years (see *Lister v. Stubbs, [1890] All E.R. 797*). Attachment before the Judgment is considered a very harsh remedy because it substantially interferes with the defendant's property rights before the final resolution of the overall dispute. During the pendency of the suit, a defendant is normally entitled to carry on its ordinary course of business, and if business takes a turn for the worse and there is no money left by the time a judgment is granted, that is too bad for the applicant.

However, in situations where the respondent has acted fraudulently in the past or may act fraudulently in the future, a plaintiff may be able to apply to the court for an order of attachment before judgment (a *Mareva injunction*). Hence in *Bahman (Prince Abdul) Bin Turki Al Sudairy v. Abu Taha, [1980] 3 ALL ER 409 at 412* Lord Denning M.R. stated that

> A *Mareva injunction* can be granted against a man even though he is based in this country if the circumstances are such that there is a danger of his absconding or a danger of the assets being removed out of jurisdiction or disposed within jurisdiction or otherwise dealt with so that there is a danger that the plaintiff if he gets judgment will not be able to get it satisfied.

The rationale behind an order of this nature was explained in *Polly Peck International plc v. Nadir (No 2) [1992] 4 All ER 769, 785g-786a*, as follows:

> So far as it lies in their power, the courts will not permit the course of justice to be frustrated by a defendant taking action, the purpose of which is to render nugatory or less effective any judgment or order which the applicant may thereafter obtain. It is not the purpose of [the] injunction to prevent a defendant acting as he would have acted in the absence of a claim against him. Whilst a defendant who is a natural person can and should be enjoined from indulging in a spending spree undertaken with the intention of dissipating or reducing his assets before the day of judgment, he cannot be required to reduce his ordinary standard of living with a view to putting by sums to

> satisfy a judgment which may or may not be given in the future. Equally no defendant, whether a natural or a juridical person, can be enjoined in terms which will prevent him from carrying on his business in the ordinary way or from meeting his debts or other obligations as they come due prior to judgment being given in the action. Justice requires that defendants be free to incur and discharge obligations in respect of professional advice and assistance in resisting the applicant's claims. It is not the purpose of a [the] injunction to render the applicant a secured creditor, although this may be the result if the defendant offers a third party guarantee or bond in order to avoid such an injunction being imposed.

Such an order freezes the respondent's assets pending trial. Such orders are granted for an important but limited purpose: to prevent a respondent dissipating his assets with the intention or effect of frustrating enforcement of a prospective judgment. They are not granted to give a claimant advance security for his claim, although they may have that effect. They are not an end in themselves. They are a supplementary remedy, granted to protect the efficacy of court proceedings, domestic or foreign (see *Fourie v. La Roux [2007] UKHL 1*). So the object of supplemental proceedings (applications for arrest or attachment before Judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of Justice being defeated.

Because orders of this nature run contrary to the general rule against execution before judgment, extreme caution should be exercised before grant of such an order. It may be abused by the applicant who may choose to use it as a leverage for coercing the defendant to settle the suit, or as an end in itself, thereby truncating the pending litigation at the very outset or, cause unnecessary hardship to the respondent or third parties. The order should be made in exceptional cases and for that reason, for the order to issue, the applicant must establish that:

1. The applicant 's case for damages against the respondent is strong and likely to succeed;
2. There is evidence that the respondent is removing, or there is a real risk that the respondent is about to remove, his or her assets from the jurisdiction to avoid the possibility of a judgment; or
3. The respondent is otherwise dissipating or disposing of his or her assets in a manner clearly distinct from his or her usual or ordinary course of business or living so as to render the possibility of future tracing of the assets remote, if not impossible; AND

4. The applicant is prepared to pay the respondent damages in the event that the court later determines that the order should never have been issued and the respondent suffers damage as a result of the order.

An order of this nature can have very serious adverse effects often over a long period, sometimes even financial ruin, for the individual or company against whom it is made. The court should therefore be satisfied not only that there is a properly arguable case against the respondent and a risk of dissipation or hiding of assets, but also as to the proportionality of the order. Mere foreign residence or domicile of the respondent is not enough. The Court ought to be furnished with details, so far as they can be established, about the nature and financial standing of the respondent's business including its length of establishment.

Regarding the existence of a suit that is likely to succeed, the test of a good arguable case is that it must be one which is more than barely capable of serious argument, and yet not necessarily one which the Judge believes to have a better than 50 per cent chance of success (see *The Niedersachsen [1983] 1 W.L.R. 1412*). If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a *prima facie* case, the court will not go to the next stage of examining whether the interest of the applicant should be protected by exercising power under section 94 of *The Civil Procedure Act* and Order 40 rule (1) of *The Civil Procedure Rules*.

I have considered the plaint filed by the applicant although the respondents are yet to be granted leave to file their respective written statements of defence. The suit is based on averments of fact, which if established by evidence, are capable of supporting a finding in the applicant's favour as against the 2nd respondent, but not as clearly in respect of the 1st respondent in light of the principle of privity of contract. Despite the respondents not having filed their defences yet, I am satisfied that the applicant's claim meets this test.

It is well-settled that merely having a just or valid claim or a *prima facie* case, will not entitle the applicant to an order of attachment before the Judgment, unless he or she also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree

that may be passed. Risk of dissipation is usually the most important factor. If the applicant can satisfy the test, it is then for the court to decide whether it is just and convenient to grant the order. I have considered the circumstances of this case. The 1st respondent is said to owe the 2nd respondent money, part of which the 2nd responded assigned to the applicant which the 2nd respondent now it intends to retract and withdraw all funds for its own use and for the benefit of other creditors. There is nothing to show that the respondents have at any time since the filing of the suit dissipated, removed or disposed of funds or intend to deal with a specific fund in a manner clearly distinct from their usual or ordinary course of business so as to render the possibility of future tracing of the funds remote. There is no clear or irrefutable evidence to show that there is a real risk that the 2nd respondent is about to apply those funds purposely to avoid the possibility of a judgment. It appears to me that the applicant's fears are not backed by any credible evidence.

An order of this nature is not meant to prohibit the respondent from dealing with or withdrawing funds in the ordinary and proper course of business but only where there is a real risk that the respondent will dissipate or dispose of the funds other than in the ordinary course of business. It is for that reason that both Order 40 r 1 (a) (iii) and Order 41 rule (1) (b) of *The Civil Procedure Rules* require proof that the respondent has dealt with its property or any part of it "with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him or her."

I am persuaded by the decision in *Uganda Electricity Board (In Liquidation) v. Royal Van Zanten (U) Ltd, H.C. Misc Application No. 251 of 2006,* where it was decided that;

> Court ought to be satisfied not only that the defendant is really about to dispose of his property or about to remove it from its jurisdiction but also that the disposal or removal is with intent to obstruct or delay the execution of any decree that may be passed..... the satisfaction must be of the Court as regards these matters and it must be based on some material derived either from the affidavit of the party, applying .... or otherwise. (emphasis added).

The standard of candour required in applications for orders of this nature was explained in *Rex v. Kensington Income Tax Commissioners, Ex parte de Polignac (Princess) [1917] 1 K.B. 486 at 509*), and emphasised in *Re Stanford International Bank Ltd [2011] Ch 33,* as follows;

> … it is essential that the duty of candour laid upon any applicant for an order without notice is fully understood and complied with. It is not limited to an obligation not to misrepresent. It consists in a duty to consider what any other interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge. ..... Even in relatively small value cases, the potential of a restraint order to disrupt other commercial or personal dealings is considerable. ..... An application for a restraint order is emphatically not a routine matter of form, with the expectation that it will routinely be granted. The fact that the initial application is likely to be forced into a busy list, with very limited time for the judge to deal with it, is a yet further reason for the obligation of disclosure to be taken very seriously. In effect [an applicant] seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the respondent or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge.

The level of disclosure required was outlined in *Siporex Trade SA v. Comdel Commodities [1986] 2 LR 428 at 437* as follows;

1. The applicant is required to show the utmost duty of good faith and must present his case fully and fairly; as such "fair presentation" cannot be separated from the duty;
2. The affidavit or witness statement in support of the application must summarise the case and the evidence on which it is based;
3. The applicant must identity the key points for and against the application and not rely on general statements and the mere exhibiting of unhelpful documents;
4. He or she must investigate the nature of the claim alleged and facts relied on before applying and must identify any likely defences;
5. He must disclose all facts, or matters, which reasonably could be taken to be material by the judge deciding whether to grant the application; the question of materiality is not to be determined by the applicant.

The applicant must ensure that the information included in the affidavits sworn in support of the application to the court constitutes full and frank disclosure of all relevant and material facts. This is because applications of this nature are usually brought without notice to the respondent (since to give prior notice would risk the assets being dissipated or removed before the court can hear the matter), and therefore the court makes an initial order having heard only one side of the story. To

a great extent, therefore, the court is at that stage relying on the candour and integrity of the applicant and must assume, when granting such orders, that it has not been misled.

Any evidence to support the inference that the respondent is, or will dissipate or dispose of assets, must be carefully considered by court. This requirement has not been met in the application at hand. To show that there is a real risk of dissipation, the applicant is required to disclose all relevant evidence showing assets are being divested or dissipated. The applicant has simply not taken sufficient steps to obtain and furnish the information to court.

The averments in paragraph 14 of the affidavit in support of the application state that "if the said money is paid to the 2nd respondent it will be very difficult to execute any judgment against the 1st and 2nd respondent [that] may be passed against then since the two do not [have] any known unencumbered property in Uganda." The deponent cited the source of that information as the law firm representing him. It is not clear from the affidavit as to how the law firm became privy to the fact that there is a real risk that the 2nd respondent will dissipate or dispose of the funds other than in the ordinary course of business. Suffice to mention here that an affidavit based on information which does not disclose the source of that information is defective and may not support the application it purports to (see *Kabwimukya Aristella v. John Kasigwa [1978] HCB 251*). It would be unsafe to rely on the contents of a defective affidavit which cannot be relied upon to support an application.

The averments in paragraph 14 of the affidavit in support of the application neither disclose irrefutable evidence to show that there is a real risk that the respondents are removing or about to remove funds from the account purposely to avoid the possibility of a judgment nor a dissipation, removal or disposal of such assets in a manner clearly distinct from the respondents' usual or ordinary course of business so as to render the possibility of future tracing of the funds remote. The applicant has therefore not adduced credible evidence to show that there is a real risk that the respondents will dissipate or dispose of the funds other than in the ordinary course of their respective business. It appears that the intention of the applicant is to convert its unsecured debt into a secured debt yet that is not the purpose of section 94 of *The Civil Procedure Act* and Order

40 rule (1) of *The Civil Procedure Rules*. Any attempt by a plaintiff to utilise those provisions as a leverage for coercing the defendant to settle the suit should be discouraged.

Moreover Item number 6 of the "*Revised Contingency Measures by the Judiciary to Prevent and Mitigate the Spread of Covid-19*" that were issued by the Honourable Chief Justice by way of a Circular dated 7th June, 2021 as amended by the subsequent Revised Circular of 21st June, 2021, under the sub-heading "Hearing of Cases" it is clearly stated that "all execution proceedings and processes are hereby suspended for the same period of 42 days."

Attachment before judgment is analogous to execution after judgment in terms of effect upon the adversary. It is furthermore noteworthy that where property has been attached before judgment, no fresh attachment is necessary after the decree. In such a case there need be no attachment in execution, in that the Court having by reason of the attachment before judgment got control over the property can proceed to deal with it in execution of its decree.

It is well settled that attachment before judgment creates no title in the prospective decree-holder. It is merely a process whereby the Court puts its hand on the property attached and keeps it in *custodia legis* until something else happens. An order made for attachment before Judgment is addressed to a Bailiff and directs him or her to hold the property until the further orders of the Court. Both processes, i.e. attachment before judgment and attachment in execution of a decree therefore require court's supervision, which cannot be done effectively during the current period of suspension of court hearings and appearances, hence the absolute bar expressed in the Revised Circular of 21st June, 2021.

Although the Court retains an overall discretion, which it must exercise in a judicial way, to grant or refuse an order of this nature, even if the other requirements for the granting of an order have been met, there can be no discernible benefit to be derived from granting a certificate of urgency in a matter where the act sought to be restrained is already the subject of the general categorical suspension. Moreover the applicant's fear that the respondent will apply the funds once received with the object or effect of obstructing or delaying the applicant in the execution of the decree when one is eventually issued in favour of the applicant, in the current circumstances is speculative

and unfounded. The fear cannot be considered reasonable and well-founded in absence of objective facts that support the harbouring of such a fear. The applicant has not disclosed such objective facts. Consequently, I am of the view that this application does not merit the grant of the orders sought and it is accordingly dismissed with costs to the respondents.

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Delivered electronically this 13th day of July, 2021

……Stephen Mubiru……..
Stephen Mubiru
Judge,
13th July, 2021.