

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

REVISION CAUSE NO. 03 OF 2021

(Arising from Mengo Chief Magistrates Court M.A. No. 221 of 2021)

(Arising from Mengo C.S No. 151 of 2021)

FENG HUANG PLASTICS

INDUSTRIES LTD ::: APPLICANT

VERSUS

1. SSEBUNYA SOLOMON

2. BYATUKOREIRE FREDRICK

Practicing as SHREWD SOLUTIONS LTD::: RESPONDENT

BEFORE: HON JUSTICE DUNCAN GASWAGA

RULING

- [1] This is a ruling on an application brought under Sections 14(1), 17(1), and 33 of the Judicature Act Cap. 13, Sections 83,87 and 98 CPA and Order 52 rule 1, 2 and 3 CPR for orders that; the order of the Chief Magistrate of Mengo in M.A No. 151 of 2021 (Arising from Civil Suit No. 221 of 2021) and the warrant of attachment before judgment for Motor Vehicle Registration No. UBD 746W Foton Truck, be revised and set aside; Motor Vehicle Registration Number UBD 746W be immediately released to the applicant without any charges whatsoever and that the costs of this application be provided for.
- [2] The brief background to this application is that the applicant is a company duly incorporated and is doing business in Uganda at Plot 10



Mabua Road, Kololo, and Kampala without any intention of winding up. That the applicant is also the registered proprietor of Motor Vehicle Registration Number UBD 746W. The respondent filed Civil Suit No. 221 of 2021 on 01/04/2021 in the Chief Magistrate's Court of Mengo by way of summary suit for recovery of Ugx 50,000,000/= against the applicant. The applicant contends that it was not served with summons to enable it file an application to appear and defend the suit. The applicant learnt of the suit on 27/04/2021 when the 2nd respondent in the company of policemen came to impound the applicant's motor vehicle following a court order and warrant of attachment of the said motor vehicle. It is contended that the trial magistrate acted without jurisdiction in entertaining a case against an applicant whose offices are not situated within the jurisdiction of the trial magistrate and also that she acted illegally and irregularly when she granted the order and issued the warrant of attachment before judgment. Further, that the trial magistrate acted unjustly when she issued an ex parte order for attachment of the applicant's motor vehicle without affording the applicant an opportunity to be heard.

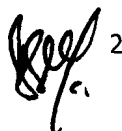
[3] This application gives rise to two issues;

(i) ***Whether the proceedings in the trial court had irregularities?***

(ii) ***What remedies are available to the parties?***

[4] The supervisory powers of the High Court over Magistrate's Courts is provided for in **Section 17(1) of the Judicature Act, Cap 13**.

[5] It was submitted for the applicant that the trial and proceedings at the Magistrate's court had a number of irregularities involved in the proceedings. It was contended by the plaintiff that the trial Magistrate

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had no jurisdiction to try the said matter since the applicant's registered address is Kololo, Mabua road in Kampala central division and that this was in contravention of Section 15 (a) of the civil procedure Act Cap.71. In reply thereof it was submitted by the 1st respondent that the Chief Magistrate at Mengo Chief Magistrate Court had the requisite jurisdiction to handle the matter since the cause of action arose in Ndeeba where the car was sold to the applicant which is within the jurisdiction of the court.

[6] According to the Cambridge English Dictionary, "*Jurisdiction is the authority of a court or official organization to make decisions and judgments.*" Jurisdiction is a creature of statute. **Section 15 of the Civil Procedure Act, Cap 71** is to the effect that;

15. Other suits to be instituted where defendants reside or cause of action arises

"Subject to the limitations in section 11 to 14 every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;*
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if in such case either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as provided in paragraph (b), acquiesce in that institution; or*
- (c) the cause of action, wholly or in part, arises.*

Explanation 1.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he or she



shall be deemed to reside at both places in respect of any cause of action arising at the place where he or she has the temporary residence.

Explanation 2.—A corporation shall be deemed to carry on business at its sole or principal office in Uganda or, in respect of any cause of action arising at any place where it has also a subordinate office, at that place.

Explanation 3.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places—

- (a) the place where the contract was made;*
- (b) the place where the contract was to be performed or its performance completed;*
- (c) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.*

[7] From the above discourse, it is apparent that a suit could be instituted where one of the parties resides, or where the principal place of business is and where the cause of action arises. It is therefore important to note that the 1st respondent instituted this matter in the right court and as such the chief magistrate mengo had the jurisdiction to entertain this matter since the contract pertaining to the motor vehicle was entered into in Ndeeba, a place within the jurisdiction of this particular court.

[8] The applicant also argued that an **order for attachment before execution** was made without a basis since the required grounds as per **Order 40 rule (1)(a)(i)-(iii) of (b)** were not established. That it should have been proved that the applicant had commenced winding up proceedings and that a person should not be barred from using his or her property merely because a suit has been commenced against



him or her. In response thereof it was submitted for the 1st respondent that the applicant had adamantly refused or neglected to pay the respondents the agreed sum and was about to remove the subject motor vehicle from the jurisdiction of the court since it is moveable property and that the applicant did not illustrate their capability of paying the sum in case judgment is entered against him in the main suit. Also that the respondent was not obliged to serve this application on the applicant since that would have defeated the purpose of the application, however the main suit had been served on the applicant.

[9] Some of the reasons advanced for the application to attach property before judgment seem to be relevant. However, apart from the 1st respondent stating that the applicant intended to remove the said vehicle from the jurisdiction of the court since it is movable property, there has been no evidence or proof by the 1st respondent that indeed the applicant intended to move or dispose of the said property.

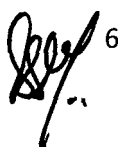
[10] The applicant has also complained that there was consideration of an application for an interim order by the court when there was no pending substantive application which was an illegality. In reply thereof, Counsel for the 1st respondent submitted that the said orders were sought to attach the subject motor vehicle to restrain the applicant from removing it from the jurisdiction of the honourable court and transferring it outside of Uganda.

[11] **Order 50 rule 3A (3) of the CPR** as amended is to the effect that;

“The court shall only consider the hearing of an application for interim relief where there is a pending substantive application with a likelihood of success.”



- [12] It now becomes apparent that before an application for an interim order is entertained, there should be a substantive application for the same order which in this instance was missing. The 1st respondent only talks about the reason for non-service of the said application on the opposite party and the exceptional circumstances in which the same can be granted however, no pertinent reason is given for failure to have such a substantive application filed in court before the application for the interim order. I therefore find that the Chief Magistrate's decision of considering an application for an interim order without a substantive application was manifestly irregular.
- [13] One of the applicant's grounds for this application is that they were never made aware of the existence of the civil suit from which all these subsequent applications and proceedings emanate. The 1st respondent submitted that service of summons was done on the applicant. However, no evidence of such proof was adduced to confirm that service of the application was indeed effected on the applicant. An affidavit of service should have been the best proof of such service. Clearly, the applicant was denied a right to be heard in this matter intentionally.
- [14] As can be discerned from the record, the summary suit was filed on 01/04/2021 and the application for interim orders heard on the same day. The pertinent question is when was the service of court process to make the defendant/ applicant aware of the suit done? It is not surprising therefore that no proof of service of court process on the defendant/ applicant exists on the record. I wish to stress that in these circumstances it is immaterial whether the defendant/applicant has a good or bad case/defence or is likely to move the subject matter

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outside the jurisdiction of the court. What the law dictates, and indeed what matters, is that a party has to be accorded a chance to be heard before a decision is taken against them. On this note, I believe the applicants when they submitted that they were not served with court process (plaint) and only learn of this case when execution was being conducted. It also follows that whatever was done emanating from such faulty proceedings was illegal and a nullity. In short, the attachment of the motor vehicle Reg. No. UBD 746W Foton Truck by the second respondent cannot be allowed to stand. The first issue is answered in the affirmative.

[15] The applicant moved this court to set aside the order of the trial Magistrate in M.A No. 151 of 2021 and the warrant of attachment before judgment for motor vehicle registration number UBD 746W Foton Truck; an order for the immediate release of motor vehicle registration number UBD 746W to the applicant without any charges whatsoever and for costs of the application.

[16] From the foregoing, I find that all the irregularities in the proceedings stem from the failure by the 1st respondent to bring to the notice of the applicants the existence of a summary suit filed against them, and secondly, the handling and granting of an application for interim order without a substantive application for attachment before judgment.

[17] **In the circumstances therefore, pursuant to Section 83 (c) CPA the application is allowed with the following orders;**

- a) that the Order of the Chief Magistrate of Mengo in M.A No. 151 of 2021 arising from Civil Suit No. 221 of 2021 be and is hereby set aside.**

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- b) that the Motor Vehicle Registration Number UBD 746W Foton Truck should immediately be released from attachment and handed over to the applicant without any charge whatsoever**
- c) that the Registrar of this court urgently returns this file to Mengo Chief Magistrate's Court for a fresh hearing to be conducted before another Judicial Officer.**
- d) Given the genesis and circumstances of this case as can be discerned from the pleadings, I shall make no order as to costs.**

I so order

Dated, signed and delivered at Kampala 24th day of January, 2022



Duncan Gaswaga

Judge