

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

(ARISING FROM MISCELLANEOUS APPLICATIONS No. 236 & 246 OF 2020)

(ARISING FROM CIVIL SUIT No. 828 OF 2014)

VERSUS

**ST. BALIKUDEMBE MARKET STALLS, SPACE & LOCKUP
SHOPS OWNERS ASSOCIATION LIMITED**

AND

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

This application was brought by Notice of Motion under the provisions of sections 34 & 98 of the Civil Procedure Act, Cap. 71, and Order 50 Rule 3, and Order 52 Rules 1 & 2 of the Civil Procedure Rules, SI 71-1 seeking orders that:

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- 5 2. That all those amounts owing under the Decree issued in High Court Civil Suit No. 353 of 2018, St. Balikuddembe Market Stalls, Space & Lock up shops Owners Association Vs Kampala Capital City Authority be re-attached in favor of the Applicant (Judgment Creditor).
3. Costs of this application be provided for.

10 Facts

This application is supported by an affidavit of Muhammad K. Sennoga the Legal Manager of the Applicant company (hereinafter referred to as "Judgment Creditor"), deponed in paragraphs 1-15, and summarized as follows: -

15 That on 22nd May, 2015, through a Consent Judgment(Decree) between the Judgment Creditor, and the 1st Respondent (hereinafter referred to as "Judgment Debtor") in Civil Suit No. 828 of 2014, the Judgment Creditor was awarded UGX 3,660,355,492 (Uganda Shillings Three Billion Six Hundred Sixty Million Three Hundred Fifty Five Thousand Four Hundred Ninety Two only) payable within 90 days from the date of execution of the consent as seen in the copy of the consent
20 attached, and marked Annexure "A".

That the Judgment Debtor defaulted on satisfying the above Decree prompting the Applicant to lodge Miscellaneous Application No. 236 of 2020, to garnishee all those amounts owing to the Debtor from the 2nd Respondent under High Court Civil Suit No. 353 of 2018 at Civil Division; St. Balikuddembe Market stalls, Space &
25 Lock up Shops Owners Association Vs Kampala Capital City Authority.

That on 22nd June, 2020, a garnishee Order Nisi was issued attaching the Decree in High Court Civil Suit No. 353 of 2018 at Civil Division; St. Balikuddembe Market stalls, Space & Lock up Shops Owners Association Vs Kampala Capital City Authority in favor of the Applicant.

30 That the Judgment creditor consequently, after protracted discussions with the Judgment debtor, entered into a consent at execution dated 10th August, 2020, where it was explicitly agreed that the Judgment Debtor together with the 2nd Respondent would make good, on the sums that are owed to the Judgment creditor.

35 That ever since the said consent at execution was executed, the Judgment Debtor has only paid UGX 2,000,000,000 (Uganda Shillings Two Billion only), leaving an outstanding balance of UGX 3,000,000,000 (Uganda Shillings Three Billion only) to date which should have also been paid before the 23rd day of December,

5 2020. That it was agreed that should there be a default in the terms set out, then execution would issue.

That it is more than 6(six) months since the last payment of UGX 2,000,000,000 (Uganda Shillings Two Billion Only) was made, and all efforts by the Judgment Creditor to access its balance from both the Judgment Debtor, and the 2nd Respondent have been frustrated to the Judgment Creditor's detriment.

That the said balance attracted an interest rate of 15% per annum as agreed, and the total outstanding balance as at the time of filing this application was UGX 2,205,072,735 (Uganda Shillings Two Billion Two Hundred Five Million Seventy Two Thousand Seven Hundred Thirty Five only)

15 That out of UGX 400,000,000 (Uganda shillings Four Hundred Million only) payable to the Judgment Creditors' Counsel as costs, only UGX 300,000,000 (Uganda Shillings Three Hundred Million only) has been paid leaving a balance of UGX 100,000,000 (Uganda Shillings One Hundred Million only)

20 That it is in the interest of Justice that this Honorable Court enforces the terms of the said Consent of execution, being that this is a matter that spans a long period of time, and any further delays are costing the Judgment Creditor more.

That refusal to grant this application will cause the Judgment Creditor untold inconvenience.

25 The Respondent opposed this application in an affidavit in reply deponed in paragraphs 1-10, by George Kasekende an Advocate of the Respondent and summarized as below:

30 That the enforceability of the terms of the consent at execution was and is contingent on the 2nd Respondent's fulfilling its obligation in the said consent at execution, and that paragraph 4 of the said consent at execution, clearly stipulated the source of funds to be paid by the 1st Respondent to the Applicant.

35 That on the basis of the 2nd Respondent having to pay the 1st Respondent its owed sums out of High Court Civil Suit No. 353 of 2018 at Civil Division; St. Balikuddembe Market stalls, Space & Lock up Shops Owners Association Vs Kampala Capital City Authority, then and only then would the 1st Respondent in turn also make good on the monies owed to the Applicant.

5 That the Applicant has admitted that a sizeable payment of UGX 3,000,000,000 (Uganda Shillings Three Billion only), has been paid leaving a balance of UGX 2,000,000,000 (Uganda Shillings Two Billion only), which sums have failed to be paid by the 1st Respondent due to the frustration of the executed consent at execution by the 2nd Respondent.

10 Representation

The Applicant was represented by Counsel Justus Karuhanga of M/S KTA Advocates while the 1st Respondent was represented by Counsel Edward Kyeyune of M/S Kyeyune, Kasekende Legal Consultants & Advocates, and the 2nd Respondent was represented by Counsel Dennis Byaruhanga. Counsel for the
15 Applicant and Counsel for the 1st Respondent filed written submissions as directed by this Court.

Issues for determination

This Court, in accordance with Order 15 Rule 3 of the Civil Procedure Rules, SI 71-1, rephrased the issues for determination as below;

- 20 1. Whether the Applicant has satisfied the grounds for the grant of the relief sought for?
2. What remedies are available?

Decision

I have considered the evidence adduced by the parties herein, and the
25 submissions of Counsel for the Applicant, and the 1st Respondent, to find as hereunder:

Issue No.1: Whether the Applicant has satisfied the grounds for the grant of the relief sought for?

Section 34(1) of the Civil Procedure Act, Cap 71 provides that:

30 **“34. Questions to be determined by the court executing the decree.**

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”

5 From the reading of the above section, it is clear to me that prior to execution, a Decree should exist; it is what forms the subject for execution without which, there is nothing for the Court to execute.

10 This Court therefore, considers the procedure adopted by the Applicant improper, that is, failure to extract a Decree, which procedure is core to the applicability of the law from which the Applicant instituted this application under section 34 of the Civil Procedure Act, Cap 71.

15 I find that in the given circumstances, it is inconceivable that what has been partially executed was actually not enforceable. A garnishee order nisi, from which the parties entered a consent at execution was not enforceable until the garnishee order nisi is made absolute. This proposition of the law is replete in a number of cases. (See Court of Appeal decision in **China Henan International Cooperation Group Company Ltd Vs Justus Kyabahwa, Civil Application No.101 of 2021 (Arising from Civil Application No. 100 of 2021**, which cited with approval the case of **Choice Investments Ltd Vs Jeromnimon (Midland Bank Ltd, garnishee)**
20 **[1981]1 ALLER 225 at pg. 226**, on the procedure of garnishee as per Lord Denning MR.)

It is my considered view therefore, that this Court cannot invoke its inherent powers under section 98 of the Civil Procedure Act, Cap 71, where there is lack of propriety in the subject matter before it.

25 In the result, this Court finds no merit in this application.

Issue No:2: What remedies are available?

This Court having found issue (1) above in the negative, further makes orders that this application is dismissed.

30 In the case of **Uganda Development Bank Vs Muganga Construction Co. Ltd [1981] H.C.B 35**, cited by Counsel for the 1st Respondent, Justice Manyindo (as he then was) held that:

35 “A successful party can only be denied costs if its proved that but for his conduct, the action would not have been brought. The costs should follow the event even where the party succeeds only in the main purpose of the suit.”

5 For reasons stated above, each party shall bear own costs.

Dated and delivered electronically this 30th day of March, 2023.



SUSAN ABINYO
JUDGE
30/03/2023

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