

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

MISCELLANEOUS APPLICATION No. 1147 OF 2022

5 **(Arising from Civil Suit No. 0142 of 2018)**

KATIMBO FOUSTIN NTAMBARA **APPLICANT**

VERSUS

10 **1. VINCENT SENOGA** }
2. NAKITO BEATRICE MUJUMBA } **RESPONDENTS**
3. MBABAZI CHRISTINE }
4. KIZITO JOHN }

Before: Hon Justice Stephen Mubiru.

RULING

15. **Background.**

Sometime during the year 2018, the late Vincent Senoga filed a suit against the applicant seeking the recovery of a sum of shs. 925,000,000/= being the balance of the sale price of land comprised in Buruli LRV 2257 folio 4; Block 181 plot 17 at Kiwambya estate, which he had sold to the applicant. He later withdrew the suit with costs to the applicant and filed another against another purported buyer, in respect of which he secured a consent judgment on basis of which he sought to evict the applicant from the land. The applicant successfully had the consent decree set aside with costs, and litigation in respect of that suit continued until the demise of the deceased. Before his death, the deceased had embarked on refunding the sum of shs. 500,000,000/= deposited by the applicant as part of the purchase price for the land. The applicant now seeks to recover a sum of shs. 25,138,000/= being costs of the withdrawn suit and those awarded upon the consent decree being set aside. The applicant contends that although the respondents, being administrators of the estate of the judgement debtor and are in possession of a number of his properties and running his bank accounts, they have deliberately declined to settle the judgement debt and costs.

b. The application.

This application is made under the provisions of Order 22 rules 38, 51; and 62 and Order 52
5 rules 1 and 3 of *The Civil Procedure Rules*. The applicant seeks orders that; (i) the respondents
be orally examined as to whether they have any means of satisfying the judgement debt; (ii) the
respondents deliver all documents relating to bank accounts, duplicate certificates of titles, and
all other documents concerning the properties of the estate late Vincent Senoga to this
honourable court; (iii) the respondents be prohibited from transferring any land or premises of
10 the estate of the late Vincent Senoga; and (iv) land and premises of the estate of the late Vincent
Senoga be sold by a person appointed by court and part of the proceeds of sale be used to settle
the judgement debt and further costs of the execution. It is the applicant's case that whereas
judgment was entered in his favour against the estate of the late Vincent Senoga, the respondents
as administrators of the said estate have adamantly refused to satisfy the decree.

15

c. The affidavit in reply;

In the respondents' affidavit in reply, it is averred that the respondents together with the
members of the family of the deceased during the month of December, 2019 preformed the last
20 funeral rites of the deceased whereafter they distributed the estate and dissolved it. They
subsequently filed an inventory and discharged their duties. The estate of the deceased is no
longer in existence as it was fully distributed among the beneficiaries.

d. Submissions of counsel for the applicant.

25

M/s Luswata-Kibanda and Co. Advocates on behalf of the applicant submitted that Order 22
Rule 38 of *The Civil Procedure Rules* provides for the oral examination of a judgement debtor
to his or her property. The respondents fall under the category of "any other person" as provided
in rule 38 (c) thereof. The respondents can be orally examined as to whether the judgement
30 debtor has any and what property or means of satisfying the decree and the court may make an
order for the attendance and examination of any other person and for the production of any books

or documents. Since obtaining the grant of letters of administration, the respondents have not complied with the directive of the court to file an inventory within six months of the grant, although they have at all times been aware of the deceased's debts which include the taxed Bill of costs. They have deliberately neither disclosed the debts to the court nor attempted to settle
5 the debts. They have also neither filed a full and true inventory of the deceased's properties and credits nor exhibited a true account of beneficiaries, how the properties were distributed, a list of debts and how they were settled. Because of the conduct of the respondents in not recognizing and settling the deceased's debts, Counsel prayed that they are subjected to oral examination as to whether the judgement debtor has any and what property or means of paying the taxed costs of
10 shs. 25,138,000/= and the costs of this application. A mere statement that the property was distributed does not stop this honourable court to carry out its investigations.

e. Submissions of counsel for the respondents.

15 M/s Kintu Nteza and Co. Advocates on behalf of the respondents submitted that the respondents together with the members of the family of the deceased during the month of December, 2019 preformed the last funeral rites of the deceased whereafter they distributed the estate and dissolved it. They subsequently filed an inventory and discharged their duties. The estate of the deceased is no longer in existence as it was fully distributed among the beneficiaries. All
20 documents of title were duly handed over to the respective beneficiaries and the respondents therefore no longer have access to the documents sought.

f. The decision.

25 The judgment creditor has a number of supplementary reliefs available to enjoin the conveyance or dissipation of the debtor's property, to preserve such property, to have it disclosed and restored or to acquire such other relief as may be necessary and appropriate. Among such reliefs is post-judgment discovery in aid of execution. The judgment creditor may apply for supplementary relief at any time after judgment has been entered in his or her favour. The filing of an
30 application for execution is not a prerequisite for seeking such relief; rather, it is the right of a judgment creditor to apply as a matter of course. Since this proceeding may be invoked before

execution, no unsuccessful attempt to discover the judgment debtor's property need be shown. The application though may be filed separately or concurrently with one seeking any of the modes of execution.

5 Post-judgment discovery and interrogatories in aid of execution by necessity partake of different values than pretrial discovery. They allow the prevailing party to ascertain the existence, nature and location of assets, if any, the judgment debtor has to satisfy the judgment debt. Another purpose is to discover concealed or fraudulently transferred assets. It may also be invoked to compel disclosure of the location of a known but missing piece of property. The process of post-
10 judgment discovery may include common tools known in civil or criminal cases such as depositions, interrogatories, requests for admissions, and demands for the production of documents, but typically consists of interrogatories and requests to produce. By the debtor's failure to answer the post-judgment discovery, the creditor can file a motion to compel the responses required by the post-judgment discovery. In aid of the judgment or execution, the
15 judgment creditor or a successor in interest whose interest appears of record may obtain discovery from the judgment debtor,

Post-judgment discovery works more or less the same way as pre-trial discovery, and is governed similarly by court rules that dictate what information or documents the parties may
20 exchange, timeframes for exchanging it, and penalties for defying discovery requests. Post-judgment discovery though can be more extensive, intrusive, and very broad in scope as it is designed to allow the judgment creditor to cast a long shadow over the assets potentially available to satisfy its judgment, although procedure and due process remain sacrosanct. The judgment creditor is permitted to make a broad inquiry to discover any hidden or concealed
25 assets of a judgment debtor. Through post-judgment inspection demands, the judgment creditor may obtain documents disclosing the debtor's assets or earnings, e.g., tax returns, financial statements, payroll stubs, real property deeds, stock certificates, passbooks, deposit account statements, bonds, trust deeds, motor vehicle ownership certificates, promissory notes, etc. Discovery may be sought not only of assets currently owned by the debtor, or information
30 reasonably calculated to lead to assets currently owned by the debtor, but also of information on any assets that may have been owned by the debtor during the pendency of the dispute or the

debt. There is a presumption in favour of full discovery of any matters arguably related to the creditor's efforts to trace the debtor's assets and otherwise to enforce the judgment. The type of property to be disclosed is unlimited; it may be real or personal, tangible or intangible.

5 Even though post-judgment discovery may resemble the proverbial fishing expedition, a judgment creditor is entitled to fish for assets of the judgment debtor otherwise he or she will rarely obtain satisfaction of his judgment from a reluctant judgment debtor. While the permissible scope of discovery is wider than that at the pre-trial stage, nevertheless the courts may justifiably restrict it to require disclosure of the whereabouts only of a particular item or
10 category asset of assets, rather than allow the judgment creditor to attempt a fishing expedition. The Court will not permit parties to embark on a "fishing expedition" in the hope of locating disposable property; there must be a basis beyond mere speculation. Post-judgment discovery may amount to a fishing expedition in circumstances where the judgment creditor has no idea whether there are any fish in the pond. The court should balance the judgment creditors right to
15 discovery with the need to prevent fishing expeditions. Vague, overbroad, from a time perspective, and unduly burdensome requests will be rejected. Post-judgment asset discovery must be "relevant" to satisfying the judgment. If an asset cannot be seized, sold, and applied to a judgment, it cannot be "relevant" to satisfaction of a judgment.

20 An order of post judgment discovery permits the judgment creditor to inspect and copy documents in the possession, custody or control of the judgment debtor in the same manner and in the same time provided in Order 10 rule 12 of *The Civil procedure Rules*. The judgment creditor may then apply to the court for an order, upon a sound basis for such belief, allowing the judgment creditor to examine, under oath, any third party in possession or control of the property
25 of the judgment debtor or who is himself indebted to the judgment debtor. Inquiries of non-parties must be kept pertinent to the goal of discovering concealed assets of the judgment debtor and not be allowed to become a means of harassment of the non-parties. A third party's personal assets are not subject to discovery or execution merely because the individual also serves as the managing agent of a judgment debtor in a representative capacity. Discovery must be relevant to
30 finding assets of the judgment debtor and cannot be used for harassment or to discover assets of the third party itself.

A judgment creditor has the right to discover any assets the judgment debtor might have that could be subject to execution to satisfy the judgment, or assets that the debtor might have recently transferred. According to section 37 of *The Civil Procedure Act*, where a judgment
5 debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the decree against the legal representative of the deceased, or against any person who has intermeddled with the estate of the deceased. Where the decree is executed against the legal representative, such legal representative is liable only to the extent of the property of the deceased which has come to his or her hands and has not been duly disposed
10 of. For the purposes of ascertaining that liability, the court executing the decree may, of its own motion or on the application of the decree holder, compel the legal representative to produce such accounts as it thinks fit.

Counsel for the respondents contends that the estate of the deceased having been “duly disposed
15 of” by way of distribution to the beneficiaries, the respondents are no longer accountable for the debts of the estate. However, the respondents have not furnished court with any documentary proof of the alleged distribution. Even if that were the case, the court is still empowered by section 37 (2) of *The Civil Procedure Act* to “compel the legal representative to produce such accounts as it thinks fit,” in order to verify that fact. According to section 278 (2) of *The*
20 *Succession Act*, on the completion of the administration of an estate, an administrator is required to file in court the final accounts relating to the estate verified by an affidavit two copies of which have to be transmitted by the court to the Administrator General. The respondents have not furnished court with proof that this step was undertaken. An administrator cannot be discharged before exhibiting an account of the estate showing the assets which have come to his
25 or her hands and the manner in which he or she has applied or disposed of it (see *In re Proscovia Kaala, H. C. Misc. Application No. 276 of 2013*). Once the final order of discharge is received the estate is officially closed and there is nothing else to do. The respondents in the instant application cannot claim to have been discharged without furnishing court with such an account and a final order of discharge.

30

Upon the winding up of an estate, administrators may apply to be discharged from the office of administrator. The administrator should aver that they have fully administered the estate and then name all of the beneficiaries or people who received distributions from the estate. All parties named in the petition should sign an acknowledgement. This acknowledgement states that the beneficiary understands the estate is closing and has no objection. This prevents them from accusing the administrator of wrongdoing or later claiming they did not receive their share. If all the beneficiaries do not sign, they can be served personally or by publication. Upon such application and upon it appearing to the Court that the discharge of the administrator will be for the benefit of the parties interested in the estate of the deceased, the Court may grant such discharge and revoke the letters of administration, upon such terms and conditions as the Court deems necessary for the security of the estate of the deceased.

Until an administrator has obtained a discharge by the Court, legal proceedings may be instituted against the administrator in respect of any claim against the deceased estate or any benefit out of that estate, including in respect of liability relating to any fraudulent dealing in connection with the estate or liquidation or distribution thereof whilst he/she is still administrator. So long as the estate remains open a creditor can make a claim and the administrator would have to refute it.

Order 22 Rule 38 of *The Civil Procedure Rules* provides for the oral examination of a judgment debtor as to his or her property. This allows the court to order the administrators of the estate of a judgment debtor to attend the Court and report to the court as to the estate's financial situation. This enables the creditor to gain an understanding of the debtor's estate's financial circumstances. If the administrators of the estate of a debtor do not attend a Summons for Examination listed, the court may issue a warrant to arrest the administrators of the estate of a judgment debtor. A Judgment Summons for Oral Examination is a means by which the Judgment Creditor or his advocate can ask questions of the administrators of the estate of a judgment debtor under oath as to the income of the estate, its assets and liabilities and concerning the means of satisfying a judgment, or questions concerning or in aid of enforcement.

I find in this case that the facts pleaded by the applicant establish the requisite close link between the judgment debtor and the respondents as administrators of his estate beyond mere speculation

and good reason to warrant discovery orders against them. The information sought from the respondents is necessary and relevant for applicant to determine whether the respondents have attachable assets in their custody and control, or transferred them in order to evade collection of the judgment.

5

Consequently, the respondents are hereby summoned to appear personally in this Court at the Commercial Division of the High Court, Court Room 4 on the 25th day of January, 2023 at the hour of 2.30 O'clock in the afternoon, or so soon thereafter, to be examined on oath by the Court touching the means they have or have had since the date of the Judgment to satisfy the sum payable in pursuance of the said Judgment, and also to show cause why they should not be committed to prison for such default. For purposes of tat hearing, the respondents shall serve upon counsel for the applicant at least seven days before the hearing date, a copy of an up-to-date inventory and account of the affairs of the estate of the deceased. The costs of the application shall abide the outcome of the Summons for Examination process undertaken on that day, or so soon thereafter.

10

15

Delivered electronically this 13th day of January, 2023
Mubiru.....

.....**Stephen**

Stephen Mubiru
Judge,
13th January, 2023.

20