

THE REPUBLIC OF UGANDA

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

**MISCELLANEOUS APPEAL NO. 0027 OF 2022
ARISING OUT OF HCMA NO. 0664 OF 2022
ARISING OUT OF EMA NO. 122 OF 2022
ALL ARISING OUT OF HCCS NO. 358 OF 2006**

DAMAS MULAGWE:..... APPELLANT

VERSUS

BANK OF UGANDA:..... RESPONDENT

Before Hon. Lady Justice Patricia Kahigi Asimwe

Judgement

Introduction

1. This is an appeal brought by Notice of Motion under Order 50 Rule 8 of the Civil Procedure Rules S.1 71-1. The appeal is against the ruling of the Learned Deputy Registrar, Her Worship Juliet Harty Hatanga delivered on the 22nd of July 2022 in Miscellaneous Application No.0664 of 2022. The Appeal is premised on the following grounds:
 - a) The learned registrar erred in law and fact when she issued a garnishee order absolute for UGX 168,482,970 only, based on an illegal conversion of the foreign currency seized from Lanex Forex Bureau Limited.
 - b) The learned registrar erred in law when she failed to evaluate the evidence before her, thereby reaching a wrong decision of awarding the Appellant UGX 168,482,970.

- c) The amount awarded in garnishee order absolute dated 26th July 2022 in HCMA No. 0664 of 2022 be enhanced to UGX. 220,539,678 (Uganda Shillings Two Hundred Twenty Million Five Hundred Thirty-Nine Thousand Six Hundred Seventy Eight)
 - d) Costs of this Appeal be awarded to the Appellant.
 2. The Appellant swore an affidavit in support of the Appeal in which he stated as follows:
 - a) The Appellant, as judgement creditor filed Miscellaneous Application No.0664 of 2022 for, among others, orders that the decretal sum of USD 160,000 in HCCS No. 358 of 2006 and the taxed costs of USD 12,800 in CACA No.190 of 2016 making a total sum of USD 172,800 held by the garnishee for the Judgement debtor be attached to satisfy the said decrees respectively.
 - b) Having granted the garnishee order nisi on 13th June 2022, the learned Deputy Registrar issued a Ruling on 22nd July 2022 granting the garnishee absolute and thereby ordered the Respondent to pay the Appellant UGX 168,482,970.
 - c) That the Respondent's conversion of the foreign currencies had no legal basis. The Respondent by a letter dated 30th May 2011 stated that he held approximately UGX 200,000,000 that they had recovered from Lanex Forex Bureau.
 3. The Respondent filed an affidavit in Reply deponed by Margaret K. Kasule of the legal department of the Respondent who stated as follows:
 - a) Under Article 162 of the Constitution functions of the Respondent are to promote and maintain the stability of the value of the currency of Uganda and regulate the



currency system in the interest of the economic progress of Uganda.

- b) Article 162 of the Constitution of the Republic of Uganda provides for the independence/autonomy of the Respondent in the exercise of its functions.
- c) The Respondent took steps of converting the hard cash currency into Uganda currency that it manages and controls in a bid to minimize foreign currency loss.
- d) The Respondent converted the foreign currency notes to prevent any other form of demonetization loss which may include recall of foreign currency the respective issue government demonetization of foreign currency notes and/ or physical destruction of foreign currency.

4. In her Ruling, the learned Deputy Registrar cited Article 162(2) of the Constitution which stipulates that the Central Bank has autonomous powers and is not subject to direction. The Registrar concluded that the conversion of the foreign currencies into Uganda Shillings as of 2013 was legal and within the mandate of Bank of Uganda to avoid demonetization.

Representation

5. The Appellant was represented by Yusuf Betunda of Musoke & Marzuq Advocates, while the Respondent was represented by Eric Mugarura of Bank of Uganda legal department. The matter came up for hearing on 10th May 2023 and court issued directions for filing written submissions.

Submissions

Appellant's submissions

6. In reply to the Respondent's averment that this appeal was filed out of time, Counsel for the Appellant submitted that the appeal

was brought under *Order 50 Rules 8* of the *Civil Procedure Rules* and it was filed on the ECCMIS platform on 29th July 2022, which was within seven days from the date of the ruling of the registrar and was therefore filed within the stipulated time.

7. With respect to ground 1, counsel for the Appellant submitted that at the time of closure of the Judgement debtor's business or operations, the Respondent obtained monies from the Judgement debtor's premises in the currencies as indicated in the table below:

Item No.	Currency	Amount
1)	Uganda Shillings	32,321,170
2)	Kenya Shillings	554,200
3)	Tanzania Shillings	337,500
4)	US Dollars	28,277
5)	British PDS	8,115
6)	Euro	6,855
7)	South African Rand	2,200
8)	Rwandese Francs	47,000

8. The Appellant submitted that sometime in December 2013, after receiving the order of the court restraining the Judgement debtor from accessing the above foreign currencies, the Respondent proceeded to convert the judgement debtor's stated foreign currencies to Uganda Shillings. The Appellant submitted that the conversion done in 2013 lacked legal and factual basis. They further submitted that had the conversion been done at the time of satisfying the decree, the amount due from the Respondent's bank would be UGX 220,539,678. The Appellant submitted that the subject foreign currencies were maintained by the Respondent pursuant to an order of the High Court dated 14th February 2011 and the Respondent bank was not at liberty to deal with the said monies.

9. Under ground 2, counsel for the Appellant submitted that the monies held by the Respondent were not only UGX 168,482,970. The Respondent in a letter dated 30th May 2011, informed the Appellants that it was in possession of approximately UGX 200,000,000. They further submitted that the said evidence of the letter was not challenged by the Respondent.

Respondent's submissions

10. The Respondent cited Article 162(1) and (2) of the Constitution on the mandate of the Defendant. The Respondents further submitted that Section 4 of the Bank of Uganda Act sets out further functions of the Respondent which include maintaining monetary stability and issuance of currency notes and coins.
11. Counsel addressed the court on the legal basis for the conversion of the currency. With respect to the local currency of UGX 32,321,170 counsel submitted that the evidence on record is that the Respondent withdrew the currency notes and coins of 1987 series to exchange for 2010 series. They submitted that 2010 series were returned less UGX 20,000 because one note was found fake. This conversion was in line with *Section 23(3) of the Bank of Uganda Act*. The Respondent submitted that had they not taken steps to exchange the money to 2010 series it would have occasioned a loss of UGX 32,301,170 since the money would be demonetized.
12. With respect to the conversion of the other forms of currencies, the Respondent submitted that the issuing banks of the different foreign currencies in question, have over the period of fifteen years made public notices to demonetize old currency notes in favour of new ones and old notes lose legal enforceability. The Respondent submitted that if the Respondent did not take action to exchange the Uganda Shillings notes and convert the various foreign currencies, the Appellant would have lost all the money.

13. The Respondent prayed that the appeal be dismissed because the Respondent exercised its legal mandate with due consideration to the circumstances of the case and industry best practice to exchange the Uganda currency and convert the foreign currency.

Resolution

Preliminary objection

14. In the Affidavit in Reply, the Respondent raised an objection that the appeal was filed out of time. I have reviewed the record on ECCMIS and found that the learned deputy registrar's Ruling which the Appellant appeals against is dated 22nd July 2022. The Appellant filed this appeal in ECCMIS on 29th July 2022. This was on the 7th day after the decision of the Registrar. Under *Section 79(1) (b) of the Civil Procedure Act, Cap 71*, an appeal against the decision of a Registrar shall be entered within seven days from the date of the order of the Registrar. The appeal was therefore filed within the stipulated time. The preliminary objection is therefore overruled.

Ground 1 *The learned registrar erred in law and fact when she issued a garnishee order absolute for UGX 168,482,970 only, based on an illegal conversion of the foreign currency seized from Lanex Forex Bureau Limited.*

15. The Appellant's argument is that the registrar should have ordered for a payment of the money held by the Respondent at the prevailing exchange rate on the date of the order nisi which would have resulted in payment of UGX. 220,539,678. The Respondent's argument on the other hand is that the money was converted to avoid demonetization and therefore loss to the Appellants.

16. The key issue that arises from this case is whether the Respondent illegally converted the foreign currency it was holding into Uganda shillings.
17. Under **Section 17 (1) of the Bank of Uganda Act, Cap 51** it is provided that the Bank's "unit of the currency shall be the shilling." Under **Section 17(2) of the Bank of Uganda Act**, it is provided that "All monetary obligations or transactions shall be expressed recorded and settled in the shilling unless otherwise provided under any enactment or is lawfully agreed to between the parties to an agreement under any lawful obligation."
18. On the basis of the above provision I find that the Respondent lawfully converted the money in question to Uganda Shillings as it is required to pay the said money in Uganda Shillings.
19. The question then is whether the date of conversion of the money in question was the appropriate date of conversion. The money was retrieved from the premises of Lanex Forex Bureau in November 2005. On 24th March 2014, the foreign currency was converted to Uganda shillings at the prevailing rate on that date. The argument by the Respondent is that there was a risk that the Appellant would end up losing all the foreign currency due to demonetization processes that ordinarily take place in different jurisdictions.
20. In the case of **Di Ferdinando v. Simon, Smits [1920] 3 K.B. 409**, the Court of Appeal in England held that for breach of contract of carriage and conversion, the correct rate to apply was the rate on the date of the breach of contract. In this case, the Appellant initially sued the Judgement debtor for recovery

of USD 160,000 it had deposited with it and interest. The court ordered the payment of the money deposited without interest.

21. It should be noted that the money in question is not money that the Respondent owes the Appellant due to a breach of contract or some other action against the Respondent arising in a monetary award to the Appellant against Respondent. The Respondent holds this money arising from its supervisory role over institutions dealing in foreign exchange. Therefore, short of any illegality, fraud, or malice on the part of the Respondent resulting in loss to the Appellant there is no reason why the Respondent and in this case, the tax payer should end up paying more than the value of the currency that was picked from the premises of the judgement debtor (Lanex Forex Bureau).
22. Therefore, drawing an analogy from the case of **Di Ferdinando v. Simon, Smits (supra)**, I find that the interest rate that applies, in this case, is the rate as of the date of breach of contract which was in 2003 and not the date of the decree nisi.

Ground 2: Whether the learned registrar erred in law when she failed to evaluate the evidence before her, thereby reaching a wrong decision of awarding the Appellant UGX 168,482,970

23. The Appellants submitted that the Respondent informed them that it was in possession of approximately UGX 200,000,000.
24. I note that the author of the letter stated “we are in possession of approximately Ugshs. 200 Million due to Lanex Forex Bureau Limited”. It is clear from the language used in the letter that at the time of writing the letter the author of the letter was not sure

of the value of the foreign exchange in Uganda shillings. It should also be noted that this was before the money had been converted to Uganda shillings. Therefore, while the learned Registrar did not make mention of this letter in her ruling, it is clear that this letter was not conclusive on value of the money that was being held by the Respondent and therefore could not be relied upon.


25. This ground therefore also fails.

Ground 3: The amount awarded in garnishee order absolute dated 26th July 2022 in HCMA No. 0664 of 2022 be enhanced to Uganda Shillings. 220, 539, 678.

26. As found under ground 1 above the exchange rate that applies in this case is the rate as at the time when the cause of action arose and not the rate as at the date of the decree nisi. The money in possession of the Respondent is UGX 168,482,970, I therefore uphold the decision of the learned deputy Registrar issuing a garnishee absolute for UGX 168,482,970. This ground also fails.

27. In conclusion the decision of the learned deputy registrar is upheld and this appeal is dismissed with costs to the Respondent.

Dated this 8th day of September 2023.


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Patricia Kahigi Asiimwe
Judge
Delivered on ECCMIS

