

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA**

**MISC. APPLICATION NO. 913 OF 2000  
(Arising from HCCS No. 01 of 1999)**

**NELSON G. WAMBUZI ::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**BUSOGA GROWERS CO-OP. UNION LTD ::::::::::::::::::::::::::::::::::::::: DEFENDANT**

**AND**

**BENTOVIC PRINTERS, STATIONERS &**

**PUBLISHERS CO. LTD ::::::::::::::::::::::::::::::::::::::: OBJECTOR**

**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI**

**RULING:**

This is an application, by way of objection to the attachment, for release of certain printing/cutting machinery from such attachment. It was contended that under Order 19 rule 55 of the Civil Procedure Rules such order could be made on the ground that the objector purchased the machinery from the Judgment debtor and that at the time of its attachment the machinery was in the applicants possession. Secondly it was contended by Mr. Kiyemba Mutale learned counsel for the applicant that the objector had never been party to the suit under which the warrant of attachment originated. He contended that at the time of attachment the machine was clearly in the possession of the objector. What could be complained of, he said was the way he came to possess it. Learned counsel submitted that the test was whether the objector held the item in question for himself or in trust for some other person or the judgment debtor. He cited the cases of Chotabhai M. Patel vs CM. Patel & Another (1958) EA 743 at 745 - 746; and N.E. Kiwalabye vs U.C.B. & Another (1994) iv KLR 8.

Learned counsel contended that the applicant had purchased the equipment from the judgment debtor, He pointed out that the signature on the affidavit in reply was a photocopy and attacked the deponent's source of or ability to have knowledge of the circumstances of the machinery. Counsel also attacked the process of attachment and sale contending that while this warrant was dated 18/04/2000, the said is said to have taken place on 26/05/2000 when the warrant had elapsed. He further argued that a new warrant dated 27/06/2000 was strange as the alleged sale had already taken place.

In response Mr. Magellan Kazibwe learned counsel for the Respondent contended that the photocopy signature on the affidavit in reply was an irregularity that could be ignored on the authority Brooke Bond Lieberg Tanzania Ltd vs Mariam (1975) EA 266 to the effect that procedural rules need not bar justice. Learned counsel then contended that the possession of the machinery if at all by objector was unlawful, the machine having been taken by him unlawfully in the first place. He submitted that no payment had been made by objector to the judgment debtor making the possession illegal. He also argued that the objector even offered to buy the machinery for (U) Shs. Eight million after it had been attached and that he had no receipt for payment for it or any document of title to it. He conceded that the second warrant was issued to enable the auctioneer remove the machine from the objector and hand it to the successful bidder. He submitted then that if applicant claims any ownership then this was beyond the scope of the rule under consideration the correct procedure being under Order 19 rule 60. He cited the case of Serungoma vs Dev. Transport (1980) HCB 12 and prayed court to dismiss the application with costs.

I am in no doubt that at the time of the attachment and even at the time of the sale of the machinery subject of this objection, the cutting machine was in the possession of the applicant. This is accepted by both sides and necessitated a second warrant to enable the auctioneer to remove the machine from the objector in whose possession it was. In Edmond Khakale vs Benyamini Wadali (1976) HCB 29 this court stated that in objection proceedings the sole question to be investigated is one of possession and questions of legal right and title are not relevant except so far as they affect the decision as to whether the possession is on account of or in trust for the judgment debtor or some other person. In this case I think the objector had the possession on his own account having maintained it in dealings with the judgment debtor by

which the latter could have lost title to the equipment. The important thing is that the possession was with the objector.

Before leaving this matter I must say that this court would not ignore an affidavit whose deponent had only a photocopy of his signature on the affidavit. The affidavit I have on file is such an affidavit which to me is no affidavit. While the date in the Jurat is proper and the signature of the Commissioner and his stamp are also proper the signature of the deponent is visibly a photocopy. It is not possible to commission an affidavit, which is photocopy signed. An affidavit is a serious matter of evidence. It is not just a procedural question as suggested by Mr. Magellan Kazibwe.

In the premises I must allow this application and do so with costs.

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JUDGE

15/01/2001.

16/02/2001:- MR. Magellan Kazibwe for respondent.

Court: - Ruling delivered.

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D/REGISTRAR

16/02/2001.