

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO 0086 OF 2002

MILDRED LWANGA.....: PLAINTIFF

VERSUS

ADMINISTRATOR GENERAL AND

UGANDA COMMERCIAL BANK..... DEFENDANT

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

RULING:

In 1993 respondent, the Administrator General sued the applicant on behalf of the beneficiaries of the estate of the deceased person. The suit was dismissed under O.15 r.6 of the Civil Procedure Act, and the respondent condemned to costs which were taxed at shs.4,977,000/=. He did not pay.

The applicant brought garnishee proceedings against the Uganda Commercial Bank (herein after referred to as the garnishee) in whose bank respondent has an account. A garnishee nisi was granted and the garnished ordered to appear in court and show cause why he should not pay. On 7/6/2002 one Syson Kekuruso appeared on behalf of the garnishee. Her duty was to inform court whether or not the respondent had an account with the garnishee and whether or not there were sufficient funds to pay the debt in question. She never said a word and Learned Counsel for the applicant left her to leave the court without altering a word. Instead it was Mr. Stoke who appeared on behalf of the respondent that addressed court at length. The gist of his address was that the respondent's account with the garnishee is a trust account and is not subject to attachment. He referred to several provisions of the law in a bid to persuade court that his contention was right. It is that contention that I am now concerned with.

In his argument respondent contends that costs against the administrator General are normally paid out of the estate and that where there is no property the costs are to be paid from the consolidated funds.

Section 36 of the Administrator General's Act enacts as hereunder:

“The revenues of the Government shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were a private administrator, would be personally liable to discharge except when the liability is one which neither the Administrator General nor any of his agents would, by the exercise of reasonable diligence, have averted and in either of those cases the Administrator General shall not, nor shall the revenue of the Government, be subject to any liability.”

It is not suggested that the present case falls under the above stated exception.

The garnishee order is a form of attachment. A garnishee order is the order served on a garnishee attaching a debt in his hands.

The effect of attachment is to prevent private alienation of the property to the prejudice of the claims enforceable under the attachment. It does not create any security, charge or lien in favour of the attaching creditor.

A garnishee order is a prohibitory order that prohibits the garnish from giving in this case the money on the account over to the respondent.

As observed by NTABGOBA, PJ. In miscellaneous Application. No. 829 of 2001, the garnishee nisi order has not the effect of forcing the Administrator General to pay from the attached account. The attachment of the account is to force the Government to pay. The respondent does not deny that he is a judgment debtor. It is, I think, just and proper that the respondent is forced to go to Government to set the money to settle the debt. This can only be done by making an order that until payment of the debt, the Administrator General is barred from operating the account he has with the garnishee by with drawing there from any money that would deplete it to the detriment of the applicant. This order I hope will get the desired goal of forcing the Administrator General to take serious steps to get payment from the Government under section 36 of the Administrator General's Act.

To this extent the garnishee nisi is made absolute. Applicant will get taxed costs of this application. I so order.

J.B.A. Katutsi

JUDGE

28/8/2002

I direct that this ruling be raised by the Deputy Registrar.

J.B.A. Katutsi

JUDGE

28/8/2002

30/8/2002

Francis Atuki for first respondent.

Omoding for the applicant.

Applicant absent.

Second respondent absent.

Court clerk Florence.

Court:

Ruling read and delivered.

H. Wolayo

REGISTRAR