THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLENEOUS APPLICATION NO 349 OF 2003

(Arising from M.A. NO 396 OF 2003)

UGANDA ELECTRICITY BOARD…… APPELLANT

VERSUS

1. VINCENT BAGAMUHUNDA
2. JOHN KATONGOLE
3. EDWARD ROGERS KIWANUKA …… RESPONDENT

AND

STANDARD CHARTERED BANK (U) LTD :::::::::::: GARNISHEE

23rd October 2003

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

JUDGMENT:

This appeal is for orders that:-

(a) The ruling of the Registrar delivered on 23/7/2003 be set aside

(b) The decree absolute therein be discharged.

(b) Costs of the application.

The Registrars ruling that is the subject of this appeal resulted in a decree absolute being ordered in garnishee proceedings prosecuted in execution of a decree of this court which was reviewed in Miscellaneous 396 of 2003. The order for review has not been appealed and the sums payable there under was the subject of attachment by the successful party in their proceedings. The grounds for this application are set out in the Notice of Motion filed in court on 24th July 2003 but basically being that the learned Registrar was wrong in that she did not appreciate that no

sum was payable by the Respondent to the appellant and as such the garnishee would not have been ordered to pay any sums to the appellant. Both counsel agreed to file and did file written submissions. However I requested both counsel to make an oral heads of argument presentation which they did.

For the appellant it was submitted that after a decree was passed against it, it proceeded to make computations. It concluded that the decree had been satisfied by virtue of the fact that retrenchment packages had been paid out and these sums were deductible from the decretal sums leaving no sum payable until the year 2008. Secondly that the decree was not to be executed by way of garnishee proceedings as pension is paid monthly and no lump sum was now payable. The net effect was therefore to say that the Appellant now owed no money to the Respondents, under a decree, whose burden had been offset from retrenchment payments.

On his part, the respondent contended that any argument founded on retrenchment packages canceling the decree had been rejected by the trial Judge. Secondly that the Respondent had failed to certify to court under order 19 rule 2 of the CPR any adjustment made in the decretal sum using retrenchment packages or any other payment to satisfy it. Counsel cited the case of ***Pobari Vs Meghji Nathoo Shah & Others (1961) EA 676.*** Thirdly that the appeal is res judicata in so far us it seeks to deny liability of the Appellant settled in the decree in terms of Hon. Justice Egonda Ntende's Judgment. Counsel for the Respondent also attacked this appeal as being incompetent.

I have read the record of the proceedings being attacked by this appeal. I found that while appearing before the Registrar on 18/7/2003 Mr. Wamala (for Appellant) requested the Registrar as follows:-

> "Wamala: UEB has a right to be heard under section 35 of the CPA. I will avail authorities – Kateera & Kagumire Advocates Vs Administrator General & other authorities. It must be decided whether a debt is owing."

In other words counsel in garnishee proceedings sought to contest liability under a decree execution of which was in progress. However clearly no such application under section 35 of the

Act was pending nor brought. Also no proceedings to certify adjustment or discharge of the decree was brought or pending and no appeal against the decree was preferred the matter having come for review. No appeal was also preferred in respect of the order in review of the decree. My understanding of the law is that a decree absolute in garnishee proceedings i.e. if a garnishee is ordered to pay a certain sum to the decree holder such order becomes part and parcel of the original decree***. Jangli Vs Lal A 1934 A 1056.*** It is deemed to be a decree against the garnishee ***Lukka Vs Devasia A 1965 K 47*** and as such is appealable as a decree by the garnishee if for instance such garnishee denies liability or denies the debt: See Sarkar on Code of Civil Procedure 9th Ed. 2000 at pages 1469, 1471. This appeal is brought not by the garnishee but by the Judgment debtor as an aggrieved person. But the Judgment debtor has not secured any order of adjustment of the decree using the retrenchment packages. Perhaps this was impossible given that the trial Judge specifically considered and rejected the argument that those packages were not to be taken as forming part of payments under or deductible as retirement benefits from pension rights of the Judgment creditors. It also seems clear to me that counsel for the Appellants misunderstood my order of review as regards clause 6(1) of the Retirement Benefits scheme, which was subject to the proviso in clause 6(ii).

The first problem with this matter stems from the pleadings themselves. The defendants WSD filed in court on 24/1/2002 did not plead a counterclaim seeking a declaration that sums payable as retrenchment packages be deducted from the respondent's pension claims. I do not recall seeing any plea of a set off either. So the matter was not framed specifically and at the trial the defendant did not call any witness. In the case of ***Kateera & Kagumire Advocates Vs Administrator General and UCB M/A 829 of 2001*** which was cited to me the Principal Judge of this court said:-

> "In the first place the argumentative efforts by Mr. Atoke that the respondents Bank Account is not liable to attachment is without merit at this point. If he wished to deny liability to pay he should have pleaded in the defence and successfully argued it during the trial in the main suit. …the duty of the garnishee was only to inform court whether or not the account is in the name of the respondent and whether or not there were sufficient funds to pay the applicants claim and if they are sufficient, how much is there."

From the proceedings it is clear that the trial court found that the appellant had breached the pension rights of the respondents. Accordingly the court made an award in their favour. Whatever evidence was called on the matter at issue did not include the idea that the packages paid out when respondents were laid off replaced pension or part thereof. The trial court did conclude that the packages were severance payments on account of an abrupt cessation of otherwise permanent employments of the respondents. The court also stated:-

> "Unless by agreement of the parties pension rights are specifically imported into this termination package, it cannot be assumed that the package annihilates such pension rights as are existing at the time… And that pensions due under the scheme were not included in the severance or retrenchment packages paid to the plaintiffs by the defendants."

The learned Judge then made the declaration that the Respondents "were entitled to be paid pension as provided under the standing instruction No.22." As I stated earlier no appeal was preferred and the application for review that I dealt with did not tackle this issue now being raised. It is my feeling that failure to cross apply for a review on the issue tended to seal the appellants fate in far as the issue of a set off or certification of adjustments using the appellants computation is concerned. Perhaps it would still have been difficult for the appellant to successfully achieve an endorsement of its computation precisely on account of the pleadings I have mentioned earlier on. But a review is often useful to advance the ends of justice and it would appear that having not raised it then by a cross application the matter rests in terms of the decree. This is not to say that I do not see the difficulty the appellant is in. I am only saying that it seems it is late in the day. To expect the learned Registrar to go into the matters raised in this appeal would be to stretch her jurisdiction much as it may be possible for an aggrieved party to appeal against an order of the registrar.

Now what appears to be the problem is that by the computation the appellant wishes to adjust the decree and also to implement clause 6(1) of the standing instruction No. 22 which spells out the reckoning of pensionable service but what was paid was severance pay and not part of a retirement benefit. Having also breached the standing instruction the appellant seems to have opted out of its ambit and left the matter of pension to be enforced against it. The argument that

the decree can be adjusted and then stretched to 2008 to the life time benefit of some respondents is clearly a matter which the court from which this appeal arises would not have dealt with. On the other hand the learned Registrar did exactly what she was expected to do in garnishee proceedings and I am unable to say that she made any errors to warrant the unsettling of her decision. The Registrar seems to have actually been perplexed at realising that the argument she had to deal with was that the decree, execution of which was before her had been discharged in substantial part before it had issued or even before the case was filed! I think this question should have been made a subject in the pleadings trial and Judgment. The decree or appeal against it would have settled it. Such an appeal is not the one I am dealing with here. I may even suggest that the matter could have been dealt with at the stage of retrenchment or in the process of divestiture of the appellant utility. The law provides for legal audits to be carried out to determine all questions including the important element of the existing employees. In that process a pension cum retrenchment package could have been arrived at and the pleadings would have set out if they became necessary all the issues that this court is being asked in this appeal to deal with. I do sympathise with the situation of both sides in this dispute. The appellant believes he had shed off the claimants leaving some manageable pensions to be paid to survivors in 2008. The claimants however feel they have not been weaned off their employers suckle. But legal rights are often wrestled and appropriated subject to the legal judicial process. In this case I am unable to agree with the appellant that this appeal is either the proper panacea or that it should succeed on the ground that the Respondents have eaten their cake and want to have it and that the Registrar failed to deal with the issue and erroneously made the garnishee order absolute. I do not agree with the arguments ably and strenuously made by J.F. Kanyemibwa, learned counsel for the appellant. In dealing with the questions before her the learned Registrar did what she had to do and did so in her few words. As a matter of fact the pension formular annexed to the notice of motion contains details that was for the trial court and not for the Registrar or this appeal. In the circumstances I must dismiss this appeal with costs to the Respondents.

R.O. Okumu Wengi

JUDGE

23/10/2003.

23/10/2003

Kanyemibwa for Appellant

Board Secretary of appellant present

Matovu John for Respondent

Respondent present.

Court:

Judgment read.

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REGISTRAR.

2.30 p.m.

23/10/2003 Muhangi Noel of Appellant

J.F Kanyemibwa for Appellant

Senabulya Court Clerk.

Kanyemibwa: Apply for interim order of stay of execution to preserve moneys subject of the orders of garnishee pending filing and disposal of an application for leave to appeal and an application for stay of execution. The Respondents are former staff of UEB. Recovery of this money from them will be impossible. The money is on the Account is not accessible to Appellants. Pray interim order be granted in the interest of Justice.

Court: Is this the entire sum in the decree.

Kanyemibwa: This is 259 million out of sum of shs. 5 billion. But the garnishee is in respect of this 259 million. I cannot talk of the balance. There are other applications for separate garnishees. This one of course will have a bearing on the other applications.

Court: Ruling at 3.00 p.m.

R.O. Okumu Wengi]

JUDGE.

23/10/2003.

I am conversant with this matter in dispute. The main decree has not been appealed and this is the reason I refused this appeal. I would not see how much at this stage a stay of my Judgment on the appeal would do. I do not accept this application therefore. The applicant is free to either file a formal application to be heard inter partes or seek the intervention of a higher court. Application dismissed.

R.O. Okumu Wengi
JUDGE
23/10/2003.

Ruling read in open with presence of the above.

R.O. Okumu Wengi
JUDGE
23/10/2003.