

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CIVIL SUIT NO. 1314 OF 2000

BANK OF BARODA..... PLAINTIFF

VERSUS

SDV TRANSAMI (U) LTDDEFENDANT

Before: The Hon. Mr. Justice E.S. Lugayizi

RULING

This ruling is in respect of a preliminary objection that the defendant raised just as Court was about to hear the head suit. However, before going into the merits of the preliminary objection it is wise to understand its background, which is as follows.

In the early part of 2000 a Court bailiff attached a lorry registration No. 032 UDK and a trailer registration No. 062 UDK and sought to sell them to satisfy a decree that Court passed in favour of the defendant under HCCS No. 949 of 1999. On 2/5/2000 the plaintiff reacted by filing Miscellaneous Application No. 524 of 2000 (i.e. objector proceedings) against the defendant. The plaintiff sought to have the said vehicles released from attachment because it claimed an interest in them under a charge. On 3/5/2000 the court bailiff sold the vehicles in question and paid the defendant. On 28/10/2000 the plaintiff sued the defendant (under the head suit) for, among other things, the recovery of shs.120, 000, 000/= which it claimed was the value of the vehicles. It contended that despite the fact that the defendant had prior

knowledge of its interest in the vehicles, it went ahead and wrongfully sold them and kept the proceeds of the sale.

In its WSD the defendant denied the above claim. Among other things, it averred that the head suit did not disclose a cause of action against it. Therefore, it gave notice that it would raise a preliminary point of law before the hearing of the head suit. Indeed, just as Court was about to hear the head suit the defendant requested to be heard on the preliminary point of law. Briefly, that is the background to the preliminary objection.

At the time of hearing the preliminary objection Mr. Asimwe represented the plaintiff and Messrs Masembe Kanyerezi and Sekatawa represented the defendant.

Although the defendant had indicated in its WSD that it would raise one legal issue during the preliminary objection, in reality Messrs. Kanyerezi and Sekatawa raised two legal issues in their submissions. Court allowed them to argue the two issues because it thought that both of them were of profound legal importance and had been canvassed in the pleadings. In any case, Court gave Mr. Asimwe ample time to reflect upon the two legal issues before completing his submissions.

In essence, Messrs Kanyerezi and Sekatawa's submissions were as follows. Firstly, that the plaintiff had no cause of action against the defendant since it had sued the wrong party. Messrs Kanyerezi and Sekatawa argued that because the court bailiff sold the vehicles in question under a warrant of attachment the defendant had no hand in the said sale. Therefore, they concluded that it was wrong for the plaintiff to sue the defendant in respect of that sale. Secondly, Messrs Kanyerezi and Sekatawa submitted that the law bars the head suit under section 6 of the CPA and Order 19 rules 55 to 60 of the CPR.

With regard to section 6 of the CPA Messrs Kanyerezi and Sekatawa pointed out that the head suit and the uncompleted objector proceedings which the plaintiff filed prior to filing the head suit couldn't lawfully coexist.

With regard to Order 19 rules 55 to 60 of the CPR Messrs Kanyerezi and Sekatawa pointed out that the said provisions required the plaintiff to exhaust the whole process they lay down before it filed the head suit. They, then, argued that since the plaintiff did not comply with that requirement before it filed the head suit it means the head suit is premature and illegal; and that the law bars it.

For the above reasons, Messrs Kanyerezi and Sekatawa called upon Court to reject the plaint and strike it out with costs under Order 7 rule 11(d) of the CPR.

Mr. Asiimwe did not agree with Messrs Kanyerezi and Sekatawa's submissions. He submitted that the plaintiff had a cause of action against the defendant. He argued that since the defendant was the judgment- creditor under the decree authorising the court bailiff to sell the vehicles in question and the defendant was aware of the plaintiff's interest in the said vehicles at the time of sale it cannot disassociate itself from the said sale. Mr. Asiimwe cited the case of **Semakula v Musoke and two others (1981) HCB 46 Holding No. 5** in support of his position. Secondly, Mr. Asiimwe submitted that although the plaintiff filed objector proceedings in respect of the threatened sale of the vehicles in question, the subsequent sale of the vehicles rendered the said proceedings meaningless and irrelevant. In Mr. Asiimwe's opinion it is the head suit that is meaningful and relevant now. Consequently, he urged Court to over-rule the preliminary objection with costs and to go ahead and dispose of the head suit on its merits.

In case Court upholds the two legal issues raised above or any of them, it would mean that the head suit cannot lawfully stand; and Court would have to strike it out.

Be that as it may, Court will proceed to decide whether or not to overrule the preliminary objection by considering the following issues:

1. Whether the plaintiff has a cause of action against the defendant?

2. Whether in the light of the surrounding circumstances the law bars the head suit?
3. The available remedies.

With regard to the first issue, that is to say whether the plaintiff has a cause of action against the defendant Court has this to say. In determining this issue Court will consider only the plaint and its attachments. It will not take into account the defence at this juncture. (See **Onosiforo Bamuwayira & 2 others v Attorney General Civil Suit No. 996 of 1971 cited in (1973) HCB page 89; and Jeraj Shariff & Co. v Chotai Fancy Stores (1960) E. A. 374 at page 375**). Secondly, Court is mindful of the case of **Auto Garage & others v Motokov (1971) E.A. 514** that sets out the essential requirements confirming the existence of a cause of action. Those requirements are as follows:

1. That the plaintiff enjoyed a right.
2. That the said right was violated.
3. That the defendant is liable.

Looking at the plaint and its attachments only, the important question to answer now is whether they confirm the existence of the three essential requirements of a cause of action enumerated above? In Court's opinion they do. Indeed, the plaint and its attachments show that the plaintiff enjoyed a right in the sense that it had an interest in the vehicles in question that it protected under a charge. The plaint and its attachments also show that those who sold the motor vehicle and the trailer violated that right. For they knew the plaintiff had an interest in the said vehicles which they ignored and proceeded to obtain a warrant of execution and to sell the vehicles. At the end of it all, they did not compensate the plaintiff in respect of its interest in the said vehicles. Lastly, Court is satisfied that the plaint and its attachments show

that the defendant as the judgment creditor in HCCS No 949 of 1999 is liable. Despite knowledge of the plaintiffs' interest in the vehicles in question the defendant initiated the legal process that culminated in the sale of the said vehicles and kept the proceeds of sale. **(See Semakula v Musoke and two others- supra.)**

For the above reasons, Court has no choice but to hold that the plaintiff has a cause of action against the defendant.

With regard to the second issue, that is to say whether in the light of the surrounding circumstances the law bars the head suit Court has this to say. It will resolve that issue by discussing section 6 of the CPA and Order 19 rules 55 to 60 of the CPR, in relation to the objector proceedings the plaintiff filed on 2/5/2000 and the head suit which it filed on 28/10/2000.

Court will deal with section 6 of the CPA first which provides as follows:

“Stay of suits. 6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.”

The above provision simply means that a court in Uganda is prohibited from trying a matter involving litigants or their agents who are also litigants in an earlier unresolved matter (in Uganda) which has substantially the same issues for determination as the subsequent matter. Applying that principle to the situation at hand Court is satisfied that the above law bars Court from proceeding with the head suit as long as the unresolved objector proceedings are still in existence. For, the said proceedings involve the same parties and the same subject matter as the head suit; and they were filed prior to filing the head suit.

With regard to Order 19 rules 55 to 60 of the CPR Court has this to say. On a perusal of that area of the CPR it seems that a person who is aggrieved by a threatened sale of his property in execution of a decree has only one way of redressing that wrong; and that is by filing objector proceedings. On filing the said proceedings such person cannot lawfully have recourse to another civil suit or proceeding against the same party over the same matter before a court that is seized with his earlier complaint has completed investigating it and given him unfavourable results. Indeed, where such person files another suit or proceeding against the same party based on the same subject matter before a court finally disposes of the objector proceedings, such suit or proceeding is premature and illegal; and the law bars it.

In the instant case, the plaintiff filed the head suit against the defendant without first completing the objector proceedings it had earlier on filed against the same party over the same vehicles. For that reason, it follows that the head suit is pre-mature, illegal; and that the law bars it. Indeed, the plaintiff's claim that it had no choice but to file the head suit because the sale of the vehicles rendered the objector proceedings useless does not legalise the head suit. This is particularly so, when one considers that the court bailiff gave public notice of the sale of the vehicles in question on 18/4/2000. Indeed, one wonders why the plaintiff had to wait until 2/5/2000 before filing the objector proceedings! In any case, the plaintiff could have still saved the said vehicles if after filing the objector proceedings on 2/5/2000 it had immediately obtained an interim stay of execution to stop the sale of the vehicles. If it had done that it could have had good opportunity to pursue the objector proceedings to their logical conclusion; and to file the head suit lawfully.

From the foregoing, Court must find that in the light of the surrounding circumstances, section 6 of the CPA and Order 19 rules 55 to 60 of the CPR bar the head suit.

With regard to the third issue, that is to say the remedies available Court has this to say. Since the defendant has succeeded in respect of the second legal issue that it raised in respect of the preliminary objection, it means that the defendant has won the substance of the preliminary objection. It is, therefore, entitled to the remedies it is seeking. (i.e. an order striking out the plaint in the head suit and costs.) In the result, Court hereby strikes out the plaint in the head suit under Order 7 rule 11(d) of the CPR. The plaintiff will bear the costs of

the head suit and the preliminary objection.

Read before: At 11.15 a.m.

Mr. D. Mulumba for the defendant

Mr. Asiimwe for the plaintiff

Mr. Sewanyana c/clerk

E.S.Lugayizi (J)

11/8/2003.