

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL REVISION No. 0020 OF 2009

JESICA DAVIA APPLICANT

VERSUS

THEMBO NYORO MISAKI RESPONDENT

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The Applicant herein brought this application on a subject matter which is rather unfortunate and of great concern in the administration of justice. Her case as set out in the application and the supporting affidavit is that she was a tenant of the Respondent in the latter's premises in Kasese Town Council. She was in arrears in the payment of rent for some period when she was out of Kasese Town. When she came to make good her obligation to the Respondent she found that her properties had been sold by the Respondent purportedly on an order of the Chief Magistrate Kasese for distress for rent.

She made enquiries at the Chief Magistrate's Court of Kasese but could not locate any suit registered between the Respondent and herself, or any file for that purpose. Secondly, the order of Court upon which her properties were attached names someone else – one Miss Simbu – who is not herself as the defaulting tenant against whom the distress for rent was to be executed. To her application is attached a list of personal items which she had in her rented premises but which she found had been attached in execution of this disputed Court order; and which she claims were sold.

When this application was filed, the Registrar of this Court sent for the record of the lower Court from which this application has arisen; as is the procedure in such matters. The return he got was that there was no case filed on the basis of which the certificate for distress for rent was issued; and the certificate for distress itself bears no Court suit number. The Chief magistrate's

explanation to the Registrar was that he had signed the certificate in error as advocate Kikomeko of Kikomeko & Co. Advocates had taken the same straight to his chambers together with other documents, without going through the Court registry.

I then directed the Registrar to inquire from the named learned counsel to give an explanation as to what had exactly transpired. Although the Registrar communicated my directive to the counsel in writing, and there is on record clear evidence of service of this correspondence on him, counsel has not had the courtesy of responding thereto. In the circumstances then, I have to proceed to decide the merits of the application before me on the basis of the evidence and information on record.

Needless to say, an order of Court obtained without a judgment or ruling on a matter which would have been filed in Court and duly adjudicated upon is an illegality and therefore a nullity ab initio. Court can only grant a certificate for distress for rent upon an application brought before it for that purpose; and the merits thereof determined by Court. This was not the case with regard to the instant matter. Not only that; the person against whom the execution of the purported Court order was made, was not the one named in the certificate issued by Court.

The entire process was therefore manifestly riddled with fraud and illegality, and has occasioned the Applicant herein grave injustice. I must point out here that the advocate and the bailiff involved in the execution acted in a most unprofessional and culpable manner. It is wrong for an advocate to proceed direct to the chambers of a magistrate and seek to have Court documents of whatever description signed by the magistrate without the documents going through the registry of Court. For his part the bailiff would have had to obtain any certificate for such distress from Court; and this, it is apparent, was not the case in the instant circumstance.

Therefore both the advocate and the bailiff are squarely culpable for the illegality and fraud complained of, and liable for whatever loss the Applicant herein has suffered as a consequence. On the other hand, it cannot be over emphasised, the need for judicial officers, especially in the exercise of their judicial functions, to always be on the guard against persons, including officers of Court, who may seek to take advantage of the trust had in them, or laxity with which the due process may be administered by such judicial officers.

To those who suffer injustice as a consequence of any untoward decision arising from transactions such as is manifested herein, it may unfortunately appear as if the Court itself is complicit in the fraud and illegality. This is gravely injurious to the integrity of the Court in its Constitutional duty to administer justice, as it is to the interests of those who look to the Courts of law in the belief that it is the one place where the rule of law prevails and is impartially enforced; and therefore come to court for such remedy.

I am duty bound to address this issue of illegal and undue process brought to my attention. There is a corpus of authorities in the like of *Makula International Ltd. vs. Cardinal Nsubuga and Another [1982] H.C.B. 11*; for the proposition of law that once an illegality has been brought to the attention of Court, it has to overlook all other issues and resolve it. Accordingly since the Applicant lost her properties owing to the illegal act of the Advocate and bailiff, I hereby make the following orders, so as to address and avert their act of impunity:

- (i). The order for distress for rent was illegal and therefore a nullity; and is hereby expunged.
- (ii). The Applicant is entitled to the return by the bailiff of such of her properties that are recoverable as a consequence of the execution.
- (iii). The advocate and the bailiff are personally liable for whatever loss and damages to her properties and inconvenience that the Applicant has suffered owing to the illegal distress; and the Applicant may institute a suit against the said officials for the recovery of such loss and damages.
- (iv). The said advocate shall personally pay the costs of this suit.



Alfonse Chigamoy Owiny – Dollo

JUDGE

05 – 10 – 2009