



- b) An order to produce and place at the disposal of this Court motor vehicle Reg. NO KBS 741T/ZEO258.
- c) An order for attachment before Judgment of motor vehicle Reg. NO KBS 741T/ZEO258.
- d) Costs of this Application be provided for.

The grounds in support of this application are set out in the affidavit of Berutsya Nobert which briefly states:-

- 10 1) That, on the 30<sup>th</sup> of December, 2019, while driving motor vehicle Registration NO.UBF 851L with my daughter at Kanoni on Kampala Masaka Road, I rammed into Respondent's semi-trailer KBS 741T/ZEO258. That was reckless and negligently parked on the road. (A copy of the Police accident report, medical examination of the injured persons and pictures of the motor vehicle are attached hereto and collectively marked "A").
- 2) That, as a result of the accident, my daughter and I were admitted at Nkozi Hospital. (Copies of the hospital medical reports are attached and marked "B").
- 20 3) That, I reported a case of traffic accident to Buwama Police Station vide TAX 42/2019 and subsequently civil Suit No. 004 of 2019 in this Honourable Court which is pending hearing.
- 4) That, I am informed by my lawyers which I believe to be true that the main suit has a high likelihood of success.

- 5) That, on my follow up visits to the Police station, I was informed by the investigating officer that the Respondents had initiated the procedure of having Motor Vehicle Reg. No. KBS 741T/ZEO258. Released to their custody.
- 6) That, the said Motor vehicle is the Respondent's only known properly in Uganda, the Respondents being foreigners, and by removing it from Buwama Police Station may obstruct or delay me in the execution of any decree that may be passed in the main suit.
- 7) That, the Respondent is in the process of removing from the jurisdiction of this Court his known property KBS 741T/ZEO258 valued at approximately UgX 200,000,000(Two hundred Million Shillings only) that could be attached and sold in case the main suit is decided in my favour.
- 8) That, the Respondents intend to obstruct or delay the execution of my probable decree in the main suit by removing the motor vehicle from the jurisdiction of this Court.
- 9) That, I am informed by my lawyers which advice I believe to be true that this application/order is intended to give a fair balance to both parties and give them due protection while awaiting the outcome of the main suit and defeat obstruction of justice.
- 10) That, I verily believe that it is just and equitable in the circumstances that this Honorable Court be pleased to grant the Application.
- 11) That, I swear this affidavit in support of the application for production and/or non removal of Respondents motor vehicle KBS 741T/ZEO258 from Buwama Police Station and attachment of the same before Judgment in the main suit.

In reply, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed a joint affidavit, sworn by **Olais Philemon and Elia Molle**, opposing the orders sought by the Applicant which briefly states:

1) That , I read and understood the application and affidavit of Berutsya Nobert in support of the application, and its supporting documents together with my lawyer SabakakiPauline and do respond thereto as follows;-

2) That save as hereinafter admitted, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents deny each and every allegations of fact contained in the affidavit of Berutsya Nobert.

10 3) That , I am informed by my Lawyers of M/s Sanywa, Wabwire & Co. Advocates which information I believe to be true and correct that the main suit has no likelihood of success.

4) That the 1st Respondent has a physical address and offices in Tanzania and a fleet of vehicles that satisfy a possible claim of the Applicant, thus I reasonably believe that attachment of the suit trailer before judgment is not just.

20 5) That am informed by my lawyers of M/s Sanywa, Wabwire & Co. Advocates which information I verily believe to be true and correct that non-residence perse does not give the Applicant a right to apply for attachment before Judgment on the suit trailer where Tanzania and Uganda have reciprocal arrangements for enforcement of foreign judgments.

6) That I am also informed by my Lawyers of M/s Sanywa, Wabwire & Co. Advocates which information I verily believe to be true and correct that the Applicant ought to exhaust all the available remedies as stated above, hence rendering this application improper.

- 7) That I dispute the Applicant's allegation of negligence against all the Respondents.
- 8) It is just and equitable that this application be dismissed.

The 2<sup>nd</sup> Respondent (**Magesa Mbogo**) also swore an affidavit opposing the application which briefly states:-

- 1) That I read and understood the application and affidavit of Berutsya Nobert in support of the application, and its supporting documents together with my lawyer Sabakaki Pauline and do respond thereto as follows:
- 2) That save as hereinafter admitted, the 2<sup>nd</sup> Respondent denies each and every allegations of fact contained in the affidavit of Berutsya Nobert.
- 3) That, I am informed by my lawyers of M/s Sanywa, Wabwire & Co. Advocates which information I believe to be true that the main suit has a high likelihood of success.
- 4) That I am a driver of the 1<sup>st</sup> Respondent's motor vehicle No. KBS 741T/ZEO258 and at around 5:10 on the 30<sup>th</sup> December, 2019, in the course of my employment while driving the suit trailer from Masaka, on the Masaka-Kampala highway, the subject vehicle suffered mechanical breakdown that could not be immediately fixed at that particular time. Hence parking the suit trailer on the road side in a position that left 5.3 meters out of 6.3 meters that form the road of the high way which the Applicant had all rights to sue given the circumstances (Refer to the police Sketch Map attached to the plaint and copies of photographs are attached hereto as annexure "A" and "B") respectively.
- 5) That prior to reporting the mechanical breakdown of the suit trailer to the nearest police, I reasonably took precautions of putting signs showing a

stationery object including tree branches and sign posts in front and behind the truck which the plaintiff neglected.

- 6) That I reasonably believe that I had no obligation to take further special preparation for an unseen emergence on the broken down truck and the same was visible to the Applicant considering that visibility is an essential component of safe driving and overtaking.
- 7) Further, that I verily that the Applicant had a duty to keep a proper look out which included being alert to what was happening in his immediate surroundings and to be more watchful on the road and to be able to slow down when an emergence arose.
- 8) That I am an employee of the 1st Respondent including at the time of the subject accident and I dispute the applicant's allegation of negligence against all the Respondents.
- 9) It is just and equitable that this application is dismissed.

Counsel for the Applicant filed an affidavit in rejoinder sworn by the Applicant (Berutsya Nobert), and briefly states

- 1) That I have with help of my Lawyers M/s Kabuzire Mbabali & Co. Advocates read and understood the contents of the Respondent's affidavit in reply to chamber summons and I reply as hereunder.
- 2) That I wish to state that the respondents' affidavit in reply of the Chamber summons is marred with material falsehoods and deliberate lies intended to mislead this Honorable Court.
- 3) That in rejoinder to paragraph 4, of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents affidavit in reply to Chamber summons, the Respondent shall be put to strict proof thereof.

4) That in specific rejoinder to paragraphs 5,6 and 7 of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents affidavit in reply to Chamber Summons, the Applicant states that the Respondents motor vehicle Reg. No. No. KBS 741T/ZEO258 is the only known property to the Applicant in Uganda capable of being attached and sold in case the main suit is decided in his favour valued at approximately UGX 200,000,000/= (Two hundred million) belonging to the Respondents.

10 5) That, the Respondents in a bid to frustrate the Applicant from realizing the fruits of his would be decree in the main suit had earlier initiated the procedure of removing the said motor vehicle from police custody at Buwama, to wit, the Respondents are not Ugandans nor have any known place of residence within the jurisdiction of this Honourable Court.

6) That, the reciprocal enforcement of foreign Judgments is a costly procedure which expenses the applicant does not wish to incur whilst there is property in Uganda that can satisfy the judgment from the main suit.

7) That, in specific rejoinder to paragraph 5 and 6 of the 2<sup>nd</sup> Respondent's affidavit in reply, the applicants puts the 2<sup>nd</sup> Respondent to strict proof thereof.

20

8) That, in further rejoinder to paragraphs 5,6,7 and 8 of the 2<sup>nd</sup> Respondent's affidavit in reply, the Applicant states that the 2<sup>nd</sup> Respondent on the 30<sup>th</sup> December, 2019 at approximately 5:30a.m along Masaka Kampala High way negligently and recklessly parked motor vehicle No. KBS 741T/ZEO258, a semi-trailer along the roadside without putting any warnings or having any consideration for other road users causing an accident to the Applicant and his daughter.

9) That, in rejoinder to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' affidavits' in reply, the Applicant holds the 1<sup>st</sup> and 3<sup>rd</sup> Respondents vicariously liable in negligence for the reckless and negligent acts and omissions of the 2<sup>nd</sup> Respondent who at the time of the accident was and still is an employee /agent and driver of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, the owners of motor vehicle Reg. No. KBS 741T/ZEO258.

10) That, in specific rejoinder to paragraph 7 of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents affidavit in reply to chamber summons, in the alternative, should Court be inclined not to grant the order of attachment of motor vehicle RegNo. KBS 741T/ZEO258 pending the outcome of the main suit, the Applicant asks that the Respondents be ordered to furnish security to this Court the total sum of UGX 200,000,000/= (Two hundred million shillings) so as to enable the Applicant recover on execution of the decree in the main suit which has high chances of success.

11) That, the dictates of justice and equity demand that my application and the orders therein sought from this Honourable Court is granted having been verily informed by my above lawyers which information I believe is true that this Honourable Court is vested with the discretionary powers to grant the same giving both parties a fair chance at protection pending the outcome of the main suit.

### **Representation**

During the hearing of this Application, the Applicant was represented by Counsel Asiimwe Mariam, while the Respondents were represented by Counsel Sebakaki Pauline.



## **Submissions**

Both Counsels submitted orally

Counsel for the Applicant submitted that the only known property of the Respondents is the motor vehicle Reg. No. KBS 741T/ZEO258 belonging to the respondent who are not Ugandans and valued at approximately Ugx. 200.000.000/= (Two Hundred Million Shillings Only) available to the applicant to recover damages from the Respondents supposing a decree is made in his favour in the main suit.

Counsel stated the case of **MakubuyaEnockwilly T/A PollaplastVsSongdoh Firms Ltd &Anor HCMA NO. 321 /2018** Where **Justice Musa Ssekana** held that the purpose buttressed by the fact that the main object of the above provisions of law is to prevent any attempt on the part of the defendant to evade the courage of justice and avoid the decree that maybe passed against him.

**Hon Justice Musa Ssekana further noted that ,**

“Therefore such supplemental proceedings are taken recourse to aid of an ultimate decision of the suit and are initiated with a view of preventing the ends of justice from being defeated

That the applicant was informed by the investigating officer that the Respondents had initiated the procedure of having Motor Vehicle Reg. No. KBS 741T/ZEO258. Released to their custody.

The said Motor vehicle is the Respondent’s only known properly in Uganda, the Respondents being foreigners, and by removing it from Buwama Police Station may obstruct or delay in the execution of any decree that may be passed in the main suit.

That, the Respondents intend to obstruct or delay the execution of any probable decree in the main suit by removing the motor vehicle from the jurisdiction of this Court.

This application/order is intended to give a fair balance to both parties and give them due protection while awaiting the outcome of the main suit and defeat obstruction of justice.

I verily believe that it is just and equitable in the circumstances that this Honorable Court be pleased to grant the Application.

In the alternative, should Court be inclined not to grant the order of attachment of motor vehicle RegNo.KBS 741T/ZEO258 pending the outcome of the main suit, the Respondents should be ordered to furnish security to this Court the total sum of UGX 200,000,000/= (Two hundred million shillings) so as to enable the Applicant recover on execution of the decree in the main suit which has high chances of success.

### **Reply by counsel for the Respondent**

That the 1st Respondent has a physical address and offices in Tanzania and a fleet of vehicles that satisfy a possible claim of the Applicant, thus I reasonably believe that attachment of the suit trailer before judgment is not just.

That non-residence purse does not give the Applicant a right to apply for attachment before Judgment on the suit trailer where Tanzania and Uganda have reciprocal arrangements for enforcement of foreign judgments.

That the Applicant ought to exhaust all the available remedies as stated above, hence rendering this application improper.

That the respondents dispute the Applicant's allegation of negligence against all the Respondents.

That prior to reporting the mechanical breakdown of the suit trailer to the nearest police, the respondents reasonably took precautions of putting signs showing a stationary object including tree branches and sign posts in front and behind the truck which the plaintiff neglected.

That the respondents reasonably believe that they had no obligation to take further special preparation for an unseen emergence on the broken down truck and the same was visible to the Applicant considering that visibility is an essential component of safe driving and overtaking.

Further, that the Applicant had a duty to keep a proper look out which included being alert to what was happening in his immediate surroundings and to be more watchful on the road and to be able to slow down when an emergence arose.

That the Respondents motor vehicle Reg. No. KBS 741T/ZEO258 is not the only known property to the Applicant in Uganda however if it's not released it will depreciate at the police station and it's not safe at police since it's parked at the road side and it will again cause more accidents.

The Respondents pray that if court grant the order the respondents should be ordered to deposit in Court Ug 20,000,000/= (Twenty Million Shillings) since the Trailer has been impounded at police for a long period of time and as such the Respondents cannot afford the said money.

It is just and equitable that this application be dismissed.

**Counsel for the Applicant rejoinder as follows;**

- 1) That, the Respondents in a bid to frustrate the Applicant from realizing the fruits of his would be decree in the main suit had earlier initiated the procedure of removing the said motor vehicle from police custody at Buwama

, to wit, the Respondents are not Ugandans nor have any known place of residence within the jurisdiction of this honorable Court.

2) That, the reciprocal enforcement of foreign Judgments is a costly procedure which expenses the applicant does not wish to incur whilst there is property in Uganda that can satisfy the judgment from the main suit.

3) That, in specific rejoinder to paragraph 5 and 6 of the 2<sup>nd</sup> Respondent's affidavit in reply, the applicants puts the 2<sup>nd</sup> Respondent to strict proof thereof.

4) That, in further rejoinder to paragraphs 5,6,7 and 8 of the 2<sup>nd</sup> Respondent's affidavit in reply, the Applicant states that the 2<sup>nd</sup> Respondent on the 30<sup>th</sup> December, 2019 at approximately 5:30 a.m. along Masaka Kampala Highway negligently and recklessly parked motor vehicle No. KBS 741T/ZEO258, a semi-trailer along the roadside without putting any warnings or having any consideration for other road users causing an accident to the Applicant and his daughter.

5) That, in rejoinder to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' affidavits in reply, the Applicant holds the 1<sup>st</sup> and 3<sup>rd</sup> Respondents vicariously liable in negligence for the reckless and negligent acts and omissions of the 2<sup>nd</sup> Respondent who at the time of the accident was and still is an employee /agent and driver of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, the owners of motor vehicle Reg. No. KBS 741T/ZEO258.

6) That, in specific rejoinder to paragraph 7 of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents affidavit in reply to chamber summons, in the alternative, should Court be

inclined not to grant the order of attachment of motor vehicle RegNo. KBS 741T/ZEO258 pending the outcome of the main suit, the Applicant asks that the Respondents be ordered to furnish security to this Court the total sum of UGX 200,000,000/= (Two hundred million shillings) so as to enable the Applicant recover on execution of the decree in the main suit which has high chances of success.

That, the dictates of justice and equity demand that my application and the orders therein sought from this Honorable Court is granted having been verily informed by my  
10 above lawyers which information I believe is true that this Honorable Court is vested with the discretionary powers to grant the same giving both parties a fair chance at protection pending the outcome of the main suit

### **Resolution by Court.**

Having carefully heard all the submissions of both lawyers I do hereby agree with Counsel for the Applicant submissions as regards the issue of the security to be deposited in Court.

Be it as it may if the Respondents had a permanent place or other properties within Uganda Counsel for the Respondents would have attached the same on the Respondents affidavits but nothing was done, however Court went ahead to ask the  
20 second Respondent whether he has any property within Uganda, the Respondent informed Court that he has land worth Three Hundred Million Shilling but there was no proof adduced before Court.

**In Halsbury's Laws of England 4<sup>th</sup> Edition Volume 37 Para 326 states as follows;**

“To enable the Court to grant such interim relief or remedy as may be just or convenient, such relief may be designed to achieve one or more of several objectives.

For purpose of this application for attachment before judgment, such objective may be to preserve a fair balance between the parties and give them due protection while awaiting the final outcome of the proceedings.”

The Respondents are hereby ordered to deposit in court on **account No. 9030012454944 Stanbic bank Mpigi branch**) Ugx One Hundred Million as security and after payment of the said money, they can take away their **vehicle Reg No. KBS 741T/ZEO258** from police. That Court cannot order the trailer to park at court premises because it has no space.

I agree with the ruling of Hon Justice S Sekana Musa

- 10 In the case of **Makubuya Enock willy T/A Pollaplast Vs Songdoh Firms Ltd & Anor HCMA NO. 321 /2018** it was held that the purpose buttressed by the fact that the main object of the above provisions of law is to prevent any attempt on the part of the defendant to evade the mis-courage of justice and avoid the decree that maybe passed against him. It’s not shown anywhere in the affidavit in reply that the Respondents have any other properties within Uganda. Much as Uganda and Tanzania have reciprocal arrangements, the cost of enforcement is costly.

The main suit is fixed for hearing on 7th July 2021 at 9:00 am, the parties are free to continue talking and if it yields any fruits ,then parties can report to Court.

Right of appeal explained

20

.....  
**HON.JUSTICE OYUKO ANTHONY OJOK**  
**JUDGE**

*Dated this 29<sup>th</sup> April 2021*

