



The application is by a notice of motion accompanied by an affidavit sworn by FARIDA KATEREGA ZALWANGO a daughter and one of the beneficiaries of the estate of the late Farida Katerega and is based on the following grounds:-

- a. That there was no arbitral award as provided in the Arbitration and Conciliation Act.
- b. That the settlement agreement relied upon for issuance of the warrant of attachment and delivery of vacant possession did not amount to an arbitral award and was null and void.
- c. That the suit land belongs to the estate of late Hajat Farida Katerega mother of the applicants herein and has never belonged to Mohammed Katerega named in the warrant.
- d. That the warrant of attachment and delivery of vacant possession of immovable property was issued without legal basis, it was an abuse of court process and is a nullity.
- e. That it is in the interest of justice and equity that this application be allowed.

According to the affidavit of Farida Katerega the property in issue belonged to her mother following its purchase from one Haji Haruna Matovu in 1978. Her mother died in 1985 upon which the property reverted to her estate to date. On the 25<sup>th</sup> November 2002, her late father Mohammed Katerega connived with one James Ssebanakita and entered into an illegal settlement agreement before Cader in which it was stated that he was the owner of the property whereas it was well known that the property belonged to the estate of her mother. Arising out of the settlement a warrant of attachment and delivery of vacant possession of immovable property was issued by the Deputy Registrar of the High Court. It is alleged that at the time the warrant of attachment and delivery of vacant possession of immovable property was issued both the applicant/award holder and the alleged judgment debtor were dead.

The Respondent in the suit is stated to be the Deputy Registrar High Court. Mr. Isaac Muwata Deputy Registrar (Execution) High Court of Uganda filed an affidavit in reply in which he depones in paragraph 4 that the application is barred in law in as far as:-

- i. It seeks to challenge an Arbitration Award without the Applicant having capacity to do so under the Arbitration and Conciliation Act Cap 4 of the Laws of Uganda and without using the proper procedure.
- ii. It also constitutes itself into objection proceedings in as far as the Applicants seek to establish a claim to the property.
- iii. The Award creditor's representative should have been made the Respondents and not the Deputy Registrar of the Court and the Application is ipso facto a nullity.

He also expressed the views that the settlement by Cader registered in this Honourable Court is in law an Award in terms of the Arbitration and Conciliation Act and S. 59 thereof and that as long as the Notice of Registration of the award was served upon the Award Debtor's representative and the Award Creditor and the death of the parties was brought to the attention of the Execution Court, the Award was enforceable.

Paragraph 7 of his affidavit expressed the view that the Applicant's claim must first be brought against the Estate of the Award Debtor who entered into and signed the settlement confirming that the property was his before the applicant's claim to the property can be a basis for any remedies from this Honourable Court.

The essence of Judicial Review involves the assessment of the manner in which the decision is made; it is not an appeal and the jurisdiction is exercised in supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised with basic standards of legality, fairness and rationality. The case of **KAGOMA SKYLICK & 4 OTHERS VS KABALE DISTRICT LOCAL GOVERNMENT** supports the proposition that the scope of Judicial Review extends to Judicial proceedings so that instead of an applicant following the normal court process of appeal, Revision and objector proceedings like in this case a remedy is sought in Judicial Review. Justice Paul Mugamba held as follows:-

***“The applicants seek a writ of certiorari from this court. According to Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 1 at paragraph 147 certain conditions have to be in place before grant of this writ:***

***‘Certiorari lies, on application of a person aggrieved, to bring the proceedings of an inferior tribunal before the High Court for review so that the Court can determine whether they shall be quashed, or to quash such proceedings. It will issue to quash a determination for excess or lack of jurisdiction, error of law on the face of the record or breach of the rules of natural justice or where the procured by fraud, collusion or perjury.’***

The tribunal referred to is not restricted to ‘inferior’ courts. It is extended to judicial functions which are both administrative as well as judicial. See **HWR WADE in Administrative Law, 5<sup>th</sup> Edition at page 551.** See also in Re: **Application by Bukoba Gymkhana Club [1963] E.A 478.**”

In the instant case the court proceedings are vitiated by the fact that even after both parties had died the case proceeded unabated.

The Notice of Registration of Arbitration Award referred to in paragraph 6 of the Deputy Registrar's affidavit does not cure this irregularity because only an Administrator of an estate of a deceased party to a suit can properly handle the matters related to a suit and in this case nobody has come up with Letters of Administration for the estates of the deceased judgment debtor and judgment creditor that would entitle them to pursue the execution of the Arbitration Award.

In the circumstances this court makes the following orders;

1. A declaration of Attachment and delivery of vacant possession of immovable property issued by this court was illegal and therefore a nullity.
2. An order of certiorari quashing the decision of the Respondent in issuing the warrant of attachment and delivery of vacant possession of immovable property.
3. An order of prohibition prohibiting the Respondent from issuing a further warrant of attachment and delivery of vacant possession of immovable property.

It must be observed that granting an order of certiorari and quashing the decision of the Deputy Registrar, this court does not assume the legal power to deal with the matter related to the Arbitration Award and the execution arising therefrom. Under Rule 10(4) of the Judicature (Judicial Review) Rules, 2009 provides that:-

***“Where the relief sought is an order of certiorari and the High Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing the decisions, remit the matter to the lower court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the High Court.”***

The implication of the above Subrule is that if the proper legal representatives of the parties were to appear before the Deputy Registrar he would entertain the matter with a view to determining the legality of the Arbitration Award. It also implies that if the applicants had grounds to do so they would file objector proceedings to protect their interest in the property the subject of this application.

On costs this court makes no orders as to costs because the Respondent is a Deputy Registrar who performed his judicial functions and should not be condemned to costs for any error that he might have committed.

**Eldad Mwangusya**

**J U D G E**

**04.03.2013**

- [High Court](#)
- [Add to Significant Recent Additions](#)