

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CIVIL APPEAL NO. 014 OF 2010**

5 (Arising from Misc. Application No. 042 of 2008 –Objector Proceedings)  
(Arising from original Civil Suit No. 012 of 2008 at Iganga)

**MAGALA**  
**RICHARD** ::  
10 **APPELLANT**

**VERSUS**

**1. BYANTUYO WILSON**  
15 **2. GATONGANA**  
**CHARLES** ::**RESPONDENTS**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

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**JUDGMENT**

This Appeal arises out of a Ruling by the Magistrate Grade 1,  
25 Ms. Eleanor Khainza where she dismissed an objector  
application filed arising out of Execution proceedings in Civil  
Suit No. 12/2008.

In that suit, Byantuyo Wilson (Respondent No. 1 in the  
30 Appeal) filed a Summary Suit against Gatongana Charles  
(Respondent No. 2 in the Appeal) to recover a sum of  
Shs.2,010,000/-, General damages and costs of the suit.

By way of execution, the parties agreed that the Defendant hands over his interest in some rooms which the said Defendant claimed as his.

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The Objector Application challenged the arrangement on Grounds that the rooms in question do/did not belong to the said Defendant, but to the Estate of the Applicant's father.

- 10 That the Defendant therefore had no locus to give away the property in settlement of the Judgment debt.

The Appellant raised 6 Grounds of Appeal which in my view were argumentative and not concise in content. The  
15 accompanying written submissions are more of a reproduction of the same arguments before the trial Court.

Objector proceedings are provided for under **Order 22 Rules 55 - 60 of the Civil procedure Rules.**

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Under Rule 56 thereof, the claimant or Objector shall adduce evidence to show that at the date of the attachment, he or she had some interest in the property attached. The Court has the mandate to release the property from attachment  
25 once satisfied that the property was not in the possession of

the judgment Debtor or on account of or in trust of some other person. **(Rule 57 CPR).**

5 The trial magistrate seemed to have allowed the attachment to proceed under Rule 58 being satisfied that the attached property was in the possession of the Judgment Debtor as his own property and not on account of any other person.

10 This however ignored the bigger problem that the objector and the Respondents were embroiled in a dispute over the administration of an Estate.

15 While one party claims to have a right over the property by virtue of a Will, the other party claims to be the Administrator of the Estate and is in possession of Letters of Administration granted by the Chief Magistrate's Court.

20 The said Letters of Administration are also in contention since there was a Will (as claimed by each party). By the magistrate determining the objector proceedings on the basis of occupation/possession - (Rule 58 CPR) alone was just the tip of the ice bag.

25 The decision sought to resolve a bigger dispute that could at best be handled and resolved as a suit, probably before the

High Court as various issues of administration of Estates, intermeddling and the like had to be determined. There are also issues of the magistrates' jurisdiction in succession disputes.

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In view of the above, it is even futile to attempt to determine whether the Appellant or Respondents had the upper claim on the attached property.

10 On the contrary, the magistrate should have ordered release of the property from attachment and advised the parties to proceed under **Rule 60 CPR** which requires a party challenged under these provisions to file a suit.

15 Reference is made to the famous authority of **Cardinal Nsubuga Vrs. Makula International**, which requires that Courts of Law should not condone illegalities.

I accordingly order that the property be released from  
20 attachment and advise the parties to resolve the issues of the Estate in an Ordinary Suit duly filed in this Court.

The orders of the magistrate are accordingly set aside. Let the Judgment Creditor recover his money from the Debtor  
25 through other means.

Each party will bear their own costs.

5 **Godfrey Namundi**  
**JUDGE**  
**01/04/2015**