

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**  
**CIVIL REVISION NO. 17 OF 2014**  
**[ARISING FROM FAMILY CAUSE NO. 291 OF 2013]**

**WAFULA RENNY MIKE ===== APPLICANT**

**VERSUS**

**1. SARAH SHEILA WANYOTO**

**2. EQUITY BANK (U) LTD===== RESPONDENTS**

Before: **HON. MR. JUSTICE WILSON MASALU MUSENE**

**JUDGMENT**

The Applicant Wafula Renny brought this Application by Notice of motion under Section 83 and 98 of the Civil Procedure Act and Order 51 rule 1 & 3 of the Civil Procedure Rules seeking orders that the Judgment, Decree and orders made by the trial Magistrate in family cause No. 291 of 2013 be revised, a declaration that the 2<sup>nd</sup> Respondent acted illegally and irregularly when it indebted the Applicant's account A/C No. 1035200642895 at Equity Bank Katwe Branch with a sum of Ug. Shs. 150,000,000, an order to direct the Respondents jointly and severally to credit the Applicant's account with a sum of Ug. Shs. 150,000,000 and costs of the Application.

The background to this Application is that the 1<sup>st</sup> Respondent a wife to the Applicant instituted a family cause No. 291 of 2013 in the Magistrate Grade II Court against the Applicant for maintenance of their 3 children. The 1<sup>st</sup> Respondent obtained Judgment against the Applicant exparte and obtained a garnishee order from the trial Magistrate Grade II and attached the Applicant's debts with the 2<sup>nd</sup> Respondent

Bank. The Applicant then brought this Application seeking to have the orders of the lower Court revised.

The grounds in support of the Application were stated in the affidavit of Wafula Renny the Applicant herein but briefly are that:-

1. The 1<sup>st</sup> Respondent instituted a suit in the family and children's Court in the Chief Magistrate's Court at Nakawa vide 291 of 2013 seeking to order the Applicant to provide maintenance of the 3 issues of the Applicant with the 1<sup>st</sup> Respondent.
2. The suit was heard exparte by Magistrate Grade II and Judgment was given in favour of the 1<sup>st</sup> Respondent.
3. The 1<sup>st</sup> Respondent obtained a garnishee order on the 21/12/2013 from the trial Magistrate Grade II against the Applicant purporting to attach his debts with the 2<sup>nd</sup> Respondent bank.
4. A sum of Ugs. 150,000,000 was garnished by the 2<sup>nd</sup> Respondent.
5. At the time of garnishing the Applicant's account with the 2<sup>nd</sup> Respondent bank, the 2<sup>nd</sup> Respondent did not have the Applicant's debt to be garnished.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondent opposed the Application and prayed that Court dismisses it.

The Applicant was represented by M/S Bwire & Waiswa Co. Advocates while the 1<sup>st</sup> Respondent was represented by Malende & Co. Advocates and Joweria Mukalasa represented the 2<sup>nd</sup> Respondent. All Counsel filed written submissions. Counsel for the Applicant raised four issues for determination by this Court which include:-

- a) Whether the 2<sup>nd</sup> Respondent had the Applicant's debt as at 2<sup>nd</sup> December, 2013 when the 1<sup>st</sup> garnishee order was issued.
- b) Whether or not there were garnishee proceedings in the original family cause No. 291 of 2013 before decree absolute was issued.
- c) Whether or not the trial Magistrate had jurisdiction to execute order of decree absolute in Makindye Chief Magistrate Area.
- d) Remedies available to the Applicant.

In relation to the 1<sup>st</sup> Issue, Counsel for the Applicant submitted that under Order 23 r 1 of the CPR, garnishee orders are orders for attachment by a decree holder of the

debts of the judgment debtor but which debts are with the 3<sup>rd</sup> person. He argued that the debts to be attached do not include contingent debts. He relied on the commentary by MULLA on the Indian Code of Civil Procedure of 1908 to expound on a debt that can be attached which provides that a debt cannot be attached unless it is due from the garnishee to the Judgment debtor. It was stated that while an existing debt may be attached, a contingent debt can only be attached after the contingency on which the money becomes payable happens.

Counsel stated that account No. 1035200338038 and 1035200642895 from which the debts were sought to be attached were clearly opened by the Applicant for payment of loan funds that the Applicant owed the 2<sup>nd</sup> Respondent bank which was secured by a mortgage therefore it was the Applicant who owned the bank money. He further stated that according to the bank statement annexure E, it shows that as of 2/12/2013 when the 1<sup>st</sup> order was issued, the Applicant's account with the 2<sup>nd</sup> Respondent had zero balance meaning that there was nothing that could be garnished.

On the second issue of whether or not there were garnishee proceedings in the original family cause No. 291 of 2013 before decree absolute was issued, Counsel for the Applicant laid down the procedure for garnishee proceedings stated under Order 23 of the C.P.R. Counsel pointed out the fact that according to the court records in the lower Court, there are no garnishee proceedings.

Counsel for the 1<sup>st</sup> Respondent on the other hand referred to Section 16(1) of the Children Act which provides that proceedings in the family and children's Court in all matters shall be as informal as possible to give effect to the welfare principle. He also referred to Section 77 of the Children's Act which states that the family and children's Court may order for attachment of earnings if after expiration of one month from the date of making the maintenance order, the maintenance sum has not been paid. He therefore argued that according to the record of proceedings of the trial Court, there were execution proceedings which resulted into the 23<sup>rd</sup> May 2014 Court order that led to debting of the Applicant's account with the 2<sup>nd</sup> Respondent bank. He also added that the order of 23<sup>rd</sup> December, 2013 was issued by the trial Court upon motion by Counsel for the Respondent. Counsel argued that efforts were made to find the Applicant who went into hiding after being served with the maintenance Application yet the children's welfare was at stake and that

several notices to show cause why execution should not issue and warrants of arrest were issued by Court to compel the Applicant to turn up and settle the matter but he never did so.

As far as the issue of jurisdiction is concerned, Counsel for the Applicant stated that the Magistrate exercised jurisdiction not vested in her by executing of the garnishee order. He argued that the order arose from the Chief Magistrate's Court of Chief Magistrates Court of Makindye Magisterial area. He referred to order 23 rule 1(i) of the CPR which states that garnishee orders must be made within jurisdiction. He further added that the execution process bypassed the execution Department of the High Court which is vested with issuing execution orders arising from Courts in and around Kampala.

Counsel for the 1<sup>st</sup> Respondent on the other hand contended that the Magistrate had jurisdiction over the matter. He relied on Section 13(2) of the Children's Act which states that a Magistrate not below the grade of the Magistrate Grade II shall preside over family and children's Court. He also referred to Section 14(1) (b) of the same Act which provides that the family and children's Court shall have power to hear and determine all Applications relating to child care and protection. Counsel also quoted Section 76 (7) which states that the family and children's Court has jurisdiction to award any sum of money having regard to the circumstances of the case and to the financial means of the father or mother for maintenance of a child. He therefore contended that the trial Magistrate properly exercised her jurisdiction to protect the welfare of the children which was at stake since this was a welfare case where the Applicant had disappeared from home and abandoned the children for over three years and there was a threat of evicting them from the rented house in Bukoto, they needed school fees, shelter, medical attention and other needs.

In relation to the issue of executing the decree, Counsel for the Applicant referred to Section 30 of the Civil Procedure Act which provides that a decree may be executed either by the Court which passed it or by a Court to which it is sent and so it is according to Court's discretion.

The 2<sup>nd</sup> Respondent on the other hand pointed out the fact that it was not a party to the maintenance proceedings in the Magistrate's Court and it was only served with orders arising out of the said proceedings. Counsel therefore contended that the

Applicant's case against the 2<sup>nd</sup> Respondent only raises one issue of whether the 2<sup>nd</sup> Respondent acted lawfully in transferring the sum of Ug. Shs. 150,000,000 from the Applicant's account to the wife the 1<sup>st</sup> Respondent.

Counsel stated that the 2<sup>nd</sup> Respondent was served with an order directing it to freeze the Applicant's account held by the 2<sup>nd</sup> Respondent. That the 2<sup>nd</sup> Respondent was later served with an order compelling it to transfer Ug. Shs. 150,000,000 from the Applicant's account to the account of his wife the 1<sup>st</sup> Respondent and that they only effected the Court's directives accordingly.

I have carefully studied and analysed the submissions by all the Advocates in this matter. I shall handle the issues raised one by one. And I shall start with the issue as to whether the trial Magistrate had jurisdiction to entertain the matter. Counsel for the Applicant's submissions were that the trial Magistrate exercised jurisdiction not vested in her by law. Reference was made to paragraph 18 of the affidavit in support of the Application by Wafula Renny Mike, the Applicant. It states:-

**“18 that I have been further informed by my said lawyers that the learned trial Magistrate exercised jurisdiction not vested in her by law; and/or acted in exercise of her jurisdiction illegally and with material irregularity and injustice.”**

Counsel for the Applicant further submitted that the execution process also bypassed the execution Department of the High Court which is vested with issuing execution orders arising from Courts in and around Kampala. While Counsel for the Applicant has dwelt on the issue of jurisdiction as far as execution proceedings were concerned, that was the end result of the case. Other wise it is not in dispute that the family and children Court is established under Section 13(1) of the children's Act Cap 59, Laws of Uganda.

S.13(2) provides that a Magistrate not below the grade of a Magistrate Grade II shall preside over the Family and Children Court (FCC). Under S.5 of the children Act, the rights of the children among others; Education and guidance, shelter, medical attention and adequate diet.

And **Section 14 (1) (b)** of the children Act provides that the (F.C.C.) shall have power to hear and determine all Applications relating to child care and protection.

Furthermore, under S.76 (7) of the children Act, the F.C.C. has jurisdiction to award any sum of money having regard to the circumstances of the case and to the financial means of the father or mother. Section 76 (9) of the same Act provides that the Court may order that instead of monthly payment, a lumpsum determined by Court be paid and the same be expended on the maintainance of a child. In view of the above laws as outlined, the 1<sup>st</sup> Respondent was therefore correct in instituting family Cause No. 291 of 2013 in the Family and Children Court at Nakawa seeking for maintainance orders of the three children, **Joseph Nalyanga Wafula (16 years), Tereza Kituye Wafula (12 years) and Louis Wabuhanda Wafula (6 years).**

And according to paragraph 10 of the affidavit in reply **Sarah Sheilla Wanyoto Wafula**, the Applicant did not file a reply in the said family cause No. 291 of 2013 after being served with the maintenance Application.

Consequently, the 1<sup>st</sup> Respondent obtained a Court order directing the 2<sup>nd</sup> Respondent to debit the Applicant's Account No. 1035200642895 with the 2<sup>nd</sup> Respondent's Bank to the tune of UGX 150,000,000 as maintainance fees for the children.

This Court also agrees with the submissions of Counsel for the 1<sup>st</sup> Respondent that the enforcement of Judgements, decisions and orders of F.C.C is provided for under S.111 of the Children Act. It provides:-

“Subject to this Act, any enforcement applicable to the enforcement of Judgments decision and orders of a Magistrate's Court shall **subject to such modifications as may be necessary having regard to this Act**, apply to Judgements, decisions and orders of family and children Court.”

As afar as the facts and circumstances of this case are concerned, and in view of the provisions of the law as stated herein above, and in view of the paramount principle of the welfare of the children, I find and hold that the trial Magistrate properly exercised her jurisdiction.

The facts on record are that the Applicant had disappeared from home and abandoned the children for over 3 years, and despite being served with Court

documents, the Applicant did not honour them and did not file a reply in Court challenging the Application in the lower Court.

The lower Court proceedings shows that several warrants of arrest were issued against him for disobeying lawful orders of paying the awarded maintenance money but such warrants could not be executed as the Applicant was reported to be in hiding. The lower Court record also reveals that there was a threat of evicting the children and family from the rented house in Bukoto, and that the children needed school fees, shelter, medical attention and other needs. In such circumstances, I cannot fault the trial Court in ordering that the Applicant's accounts be debited to the tune of a lumpsum amount of Shs. 150,000,000 to cater for the children's maintenance. **S.16 (1) (C) of the children Act** provides that the procedure of the family and children court in all matters shall be in accordance with the rules made by the rules committee for the purpose but subject to the fact that **proceedings shall be as informal as possible.**

Learned Counsel for the Applicant in his submissions in rejoinder has conceded that the welfare principle is the paramount consideration to be taken into account when Court sits to determine questions concerning children.

However, his contention was that the amount of money which was attached was money arising from a sale of the Applicant's mortgaged property after the 2<sup>nd</sup> Respondent, **Equity Bank (U) Ltd** had deducted its loan and interest. So according to learned Counsel for the Applicant, the money was not liable for distress as it was not a chattel in the Applicant's hands and so the provisions of S.77 of the children's Act could not apply, as the money was with a third party. With due respect to learned Counsel, this Court is both a Court of law and justice. This Court will therefore not be moved by Semantics and attach the reasoning so as to be diverted from the cause of justice. The fact at hand was that the money which the trial Magistrate ordered that Applicant's account No. 1035200642895 to the tune of Shs. 150,000,000 be debited belonged to the Applicant. The children in question belonged to the Applicant, who was reported to be in hiding. And the money was a lumpsum to cater for the welfare of the said children of the Applicant.

In conclusion therefore, I find and hold that the trial Magistrate properly exercised her jurisdiction in accordance with the provisions of S.16 (1) (C) and 111 of the

children's Act and other provisions referred to. And that being the case, it is not necessary for this Court to make any revisional order, as the execution was to protect the welfare of the children. I wish to add that the decision of the lower Court was also in conformity with **Article 4 of the African Charter on the rights and welfare of a child**, Article 3 of the United Nations convention on the rights of a child, Section 3 and Principle 1 of the first schedule to the children Act, Cap 59, all stipulate that in all decisions concerning children undertaken by any person or authority, the best interests of the child shall be the primary consideration.

The next issue is whether the trial Magistrate had jurisdiction to execute the order of decree absolute in Makindye Magisterial area.

According to Counsel for the Applicant, the trial Magistrate was not vested with jurisdiction in law in executing the garnishee order. And that the same was executed in Makindye, outside the magisterial area of Nakawa.

In reply, Counsel for the 1<sup>st</sup> Respondent referred this Court to Section 31(1) of the Civil Procedure Act which provides that the Court which passed the decree may on Application of the decree holder send it for execution to another Court. They added that under S.31(2) of the Civil Procedure Act, the Court may on its own motion send it for execution to any Court of competent jurisdiction. Emphasis was that the discretion was with the Trial Court to execute or send it to another Court for execution. And that the order did not specify any particular Bank Branch of Equity Bank.

Counsel for the 2<sup>nd</sup> Respondent on the other hand submitted that the 2<sup>nd</sup> Respondent had no duty to inquire into the jurisdiction of the Court as long as it received a Court order to abide by. I have considered the submissions on the second issue and I agree with Counsel for the 1<sup>st</sup> Respondent that the discretion lay with Court whether to execute or send the decree for execution in another jurisdiction.

Furthermore, my attention has been drawn to paragraph 26 of the affidavit in reply by Sarah Sheila Wanyoto Wafula. It provides:-

**"26. That in further reply thereof, I am informed by my lawyers M/S Matende & Co. Advocates that the family and children Court is not**



**mandated to follow formal procedures in issues to do with the welfare of children and therefore rightfully exercised its jurisdiction in making the orders in family cause No. 291 of 2013.”**

I entirely agree with the above averments and add that substantial justice required that Applicant pays money for the upkeep and maintenance of his children and so Court could not be derailed by the niceties of procedure particularly since the Applicant was reported to have been in hiding and only came out after his account had been debited. I therefore do hereby reject the reasoning by Counsel for the Applicant and hold that the trial Magistrate rightfully exercised her discretion and jurisdiction in executing the decree of 23/05/2014 in Makindye Magisterial area, again in the interests of the welfare of the children.

The next issue is whether or not there was garnishee proceedings in the original family Cause No. 291 of 2013 before the decree absolute was issued on 23/05/2014. Counsel for the Applicant submitted at length on the procedure to be followed in Garnishee proceedings. They added that there were no garnishee proceedings in the Magistrate's Court and that since Garnishee procedure was not followed, then the 2<sup>nd</sup> Respondent, the Bank should be held liable.

In reply, Counsel for the 2<sup>nd</sup> Respondent submitted that to uphold the submissions of Counsel for the Applicant would mean that third parties becomes Judges of Court's orders and chose how to respond. They added that the 2<sup>nd</sup> Respondent were not party to the proceedings in the Magistrate's Court but they only received orders and acted accordingly. They concluded that the role of a party who receives or learns of a Court order is to respect it and to do anything to the contrary would tantamount to contempt of Court. Counsel for the 1<sup>st</sup> Respondent on the other hand reiterated that under **S. 16 (1) (C) of the children Act**, all proceedings in the family and

children Court in all matters shall be as informal as possible; so as to give effect to the welfare principle.

I have studied the record of the proceedings of the trial Court. It is very clear that the order of 2/12/2013 was issued by the trial Court upon motion by Counsel for 1<sup>st</sup> Respondent. The Court orders of 2/12/2013 and 23/05/2014 were issued in the course of proceedings and in view of S.16 (1) (C) of the children's Act which provides that the proceedings in the F.C.C. Court shall be as informal as possible, then I find and hold that the said orders were not irregular and were issued in the interests of the children. The lower Court record also shows that several notices to show cause why execution should not issue and warrants of arrest were issued to compel the Applicant to turn up and settle the matter but he never did so as he was reportedly on the run.

Furthermore and as already noted, the Applicant does not dispute service of Court process on him in his submissions, and he did not file a rejoinder to the 1<sup>st</sup> Respondent's affidavit in reply. The 1<sup>st</sup> Respondent has outlined how she expended the Shs. 150,000,000 and since there is no indication that the amount was misapplied or misused on anything else apart from towards the welfare and maintenance of the children, and then I cannot order that the 1<sup>st</sup> Respondent refunds the same. Under S.83 of the Civil Procedure Act, the High Court may call for any file from the Magistrate's Court for revision if the Court has exercised jurisdiction not vested in it or acted illegally or with material irregularity, or injustice. From the outgoing discussion, this Court has already found and held that the matters complained of were properly handled by the FCC.

In any case, the same Section provides that no such power of revision shall be exercised **(e), where from the lapse of time or other cause, the exercise of**

**that power would involve serious hardship to any person.** If this Court were to order for the refund of that money to the Applicant, then there is no doubt that serious hardship would be caused to the 1<sup>st</sup> Respondent who has already expended the money on the welfare of the children of both the Applicant and first Respondent.

In conclusion and in view of what I have outlined, I do hereby dismiss this Application. I order that each side meets their own costs given the circumstances of the case.

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**W. M. MUSENE**

**JUDGE**

**27/02/2015**