

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI

MISCELLANEOUS APPLICATION NO. 0163 OF 2014

ALIGANYIRA MOSES SABITI ::::: APPLICANT/OBJECTOR

KYOTASOBORA PHINEHAS ::::::::::::::::::::::: PETITIONER

VERSUS

KABAKUMBA LABWONI MASIKO & ANR :::: RESPONDENTS

BEFORE: HON. JUSTICE A. F. RUGADYA ATWOKI

KAAHWA FLORENCE COURT CLERK

RULING:

DATE: 24/3/2016

TIME: 9:37AM

On 10-3-2014, the registrar of this court issued to one Komakech Oloya a court bailiff a warrant of attachment and sale of immovable property to wit a house with rental rooms in Kijura Central in satisfaction of a decretal sum of shs. 52 million. The said sum arose out of an election petition HCT-12-CV-EP-003-2010 where on Kyotasobora Phenehasi was decreed the judgment debtor in the said sum. The said house was duly advertised for sale in newspapers of 13-11-2014.

The applicant herein, Aliganyira Moses Sabiiti objected to the attachment and sale on the grounds that he is the owner and is in possession of the said premises.

The court issued an interim order staying the sale till final disposal of this application. The house has not, therefore been sold yet.

The objector Aliganyira Moses Sabiiti deposed in the affidavit in support of the application that the property advertised does not belong to the petitioner, Kyotasobora Phenehasi. He deposed that he bought the same at shs. 150 million from this said petitioner and a sale agreement to that effect was executed on 3-10-2010, which was duly

witnessed by some 7 people. The sale agreement was attached to the affidavit. The objector deposed that even since then, he has been in possession of the suit property.

In reply, the judgment debtor attached the affidavit of the court bailiff Komakech Oloya, and later, the affidavit of one Lawrence Tumwesigye an advocate in the firm representing the judgment debtor. The court bailiff deposed another affidavit which was termed “an amended affidavit in reply”.

Counsel Baingana for the respondent conceded that there was no affidavit known in law ad “Amended affidavit.” I agree. Affidavit is evidence on oath. Once given or deposed to, it cannot be said to be the subject of amendment by the deponent. There may be a supplementary affidavit or such other affidavit, where there is need for other evidence in addition to or supplementary to that in an original or first affidavit.

That left the evidence in opposition to the application being the original affidavit of the said Komakech Oloya, the court bailiff. His evidence was to the effect that before he attached and advertised the suit premises for sale, he carried out investigations and ascertained that the house belonged to and was in the possession of the petitioner. His evidence was that he consulted the area LCI Chairperson, who by letter to the Registrar of this court, which was annexed to the affidavit, stated that the property belonged to the petitioner because, first the LCI Chairperson was not aware of any sale of this property by the petitioner to anyone else, and secondly, that the names of the petitioner were still prominent on the top front wall of the building.

The petitioner also filed an affidavit in which he deposed that the suit property no longer belonged to him, having sold the same to the objector. He annexed the sale agreement and documents showing the paying schedules for the same.

In an application for release of property from attachment, court is enjoined, under O.22 rr 55 & 57 to investigate the claim and ascertain whether the objector was in possession of the suit property at the time when the order of attachment and sale was made, in this case that would be on 10-3-2014.

Secondly, the courts through its investigation must ascertain whether such possession by the objector was on his own account, but not on account of the petitioner, the judgment debtor, thus rendering the suit property not liable for attachment. See **MUSOKE**

KIBUUJA J IN UGANDA MINERAL WATER LTD VERSUS PIRAN & ANOTHER (1994/95) HCB PG. 87.

The investigation in respect of property due for attachment and sale is limited in scope and does not go beyond just that, rule 60 of the same order 22 is clear.

The objector must show to court satisfaction his interest in the property. In this property, the objector annexed a sale agreement dated 3-10-2010. There was no evidence in rebuttal. In submissions, it was argued that this was a ploy to deny the judgment creditor her entitlement from the petition which was decided in her favour.

The case of ***MUHUMUZA HILARY VERSUS KEITH KALYEGIRA HCT MISC. APPL. NO. 364/2011*** was relied on. In that case the suit property had already been sold and the applicant had filed a suit in respect of ownership of the same. The learned judge held that she would, but for those two reasons have mentioned I have granted the application, as she found that the applicant was at the time the order of attachment and sale was made in possession and that he was such in possession on his own account but because the property had already been sold by the time the attachment and sale was done. Secondly, the applicant had in any event filed a suit in High Court Land Division contesting the ownership of such property. For those reasons the learned judge did not grant the application for releasing the property from attachment.

That case is therefore distinguishable from the present one where the suit property has not yet been sold, and I may add the fact that the suit property has already been sold is not of its own reason not to handle an application in this nature but that is another matter but also in this case there is no court case which challenges the ownership of the same.

The court bailiff deposed that he investigated the status of the suit property. His investigation were only limited to consultation with the area LCI Chairperson.

The petitioner in his affidavit deposed that when he purchased the land and when he later sold the same, the LCI Chairperson was not a witness thereto. I am not aware of any legal hindrance to execution of property agreements due to the absence of the LCI Chairpersons of the area.

In any event, the LCI chairperson did not depose an affidavit in affirmation of what was alleged to be his evidence. I found that evidence of Komakech Oloya insufficient to create doubt that the applicant was not the owner of the suit premises. There was no

evidence to rebut the objector's evidence that he was so in possession on his own account and most certainly not on account of the petitioner. I therefore answer the two questions in affirmative.

I may comment on the affidavit of counsel Lawrence Tumwesigye which was also annexed to the application in opposition of the application. I find that of no help at all to the respondent. All that counsel in that affidavit deposed to was what he learned from other parties and those other parties were not in court to give evidence nor did they depose to any affidavit in respect of the same.

In the premises therefore this application is granted. The commercial house with rental rooms at Kijura Central is accordingly released from attachment. The respondent should seek other remedies to get satisfaction of her decretal sum. Costs to the objector/applicant.

A.F.RUGADYA ATWOKI

JUDGE

24/3/2016