

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV- MA- 0224 OF 2016
(ARISING FROM MISC. APPLICATION NO. 213 AND 208-2016)
(ARISING FROM CIVIL SUIT NO. 0017 OF 2016)**

DFCU BANK (U) LTD::::::::::::::::::::: OBJECTOR /APPLICANT

VERSUS

N.N HARDWARE (U) LTD::::::::::::JUDGMENT CREDITOR/ RESPONDENT

AND

ZEYNE ENTERPRISES LTD::::::::::::JUDGMENT DEBTOR/ RESPONDENT

BEFORE: HON. JUSTICE HENRY. I. KAWESA

RULING

These are objector proceedings against the orders of this court for execution by attachment of Motor vehicles Registration Nos UAU 166G, UAU 071G, UAU 077G, UAY 706S and UAU 078G which applicant / objector claims interest in.

The application is supported by the affidavit of **Edith Ampaire** Manager of Mbale branch of applicant.

The judgment creditor and judgment debtor filed their affidavits in reply through their representatives/ agents.

The grounds for the application were as listed under (a-g)

The same grounds were deponed to by **Edith Ampaire** in her affidavit and are in summary that : the attached motor vehicles are not the properties of the judgment debtor and not liable to attachment. It was also avered that the objector/ applicant is the lawful owner/ lessor of the all the above motor vehicles which the judgment creditor has/ or seeks to attach. The applicant avers that it's the owner of the above vehicles pursuant to a vehicle sale and lease arrangement between the applicant/ objector and the judgment debtor; as per annexes 'a' 'b' and 'c' to the affidavit in support of the application.

It was argued by the objector's counsel in submission that the lease agreement under clauses 2A and 'B' of the Master Lease Agreement (Annex 'A') expressly states that the lessor leases and the lessee takes on the lease equipment for a lease term as provided for in the vehicle lease schedule (annex B). It was a further term of the agreement that ownership of the equipment shall at all times during the lease term remain in the lessor, a term of 48 months effective 20th August 2014.(Per clause 4 of annex B). The vehicles were listed under a schedule on annex B, and the objector still possessed the Registration books of the said vehicles.

Counsel in reference to legal authorities of ***Kisambira Sentamu Ismail V. Elima Elukana and Anor. (2006) 1 HCB 51*** and ***Moses Kanya V Sam Lukwago and 2 Ors , HCMA 271/2010*** argued that the applicant /objector is the lawful owner /lessor of the suit property and possessed a legal interest vested in the said vehicles at the time of attachment and thus the same ought be released from attachment .

They argued that objector had constructive possession, per *Moses Kamyia V. Sam Lukwago & 2 Ors* (Supra).

Counsel also averred that the judgment creditor has attached the suit property whose value far exceeds the decretal sum of UGX 145,227,500/= , and that if not set aside the objector/ applicant shall suffer irreparable damage and loss if the attachment and sale is not halted/ set aside, and that the orders were obtained illegally and irregularly.

The Respondents on the other hand opposed this application.

The main grounds of opposition were that the sole question to investigate is that of possession and questions of legal rights and title are irrelevant.

He said that this was a question of evidence, which the objectors have the onus to prove. They claimed that the supporting affidavit is false. The supporting master lease is not sealed, and the supporting affidavit is alien to the transactions.

He attacked the supporting log Book as being a vehicle which was not the subject of attachment.

Respondent argued that the listed vehicles were under constructive possession of the judgment debtor, and the applicant did not prove ownership. They prayed that application be dismissed.

In rejoinder applicants re-echoed the earlier position, insisting that court cannot sanction what is illegal.

Having reviewed all the arguments above, I have addressed my mind to the provisions of O. 40 R.8 of the Civil Procedure Rules which provides for the investigation of property attached before judgment. It states that:

“ Where any claim is preferred to property attached before judgment, the claim shall be investigated in the manner herein before provided for the investigation of claims to property attached in execution of a decree for the payment of money...”

This imports the provisions of O. 22 rules 55 and 57. The test is whether the property is in possession of the person at the time of attachment was in his or her possession on his or her own account.

Hon. **J. Kiryabwire** in ***Rev. Ezra Bikangiso V New Makerere Kobil Station MA. 10 of 2010*** held that:

“A lessee without special authority to the contrary cannot sell what is owned by a lessor.”

The Judge found that no attachment before judgment can issue where it affects the rights of third parties. This was also the position in ***Abby Mugimu v Basa Basa (1991) ULSLR1 91 at 195:***

This is the argument raised by the objectors in this application. From the evidence it is clear that there was a standard lease agreement between applicant/objector and the judgment debtor (as argued by the applicant’s counsel under paragraph 4.2,4.3,4.4- 4.8. This fact is not denied. I find that applicants have proved that they are the lawful owner / lessor of the suit properties. The Respondent’s argument that the affidavit in support is illegal is not founded on fact, because the applicants have

in rejoinder successfully explained that there was no requirement for sealing of the lease as per *Kintu V Kyotera Coffee Growers (1976) HCB 336*, and Section 50 of the Companies Act that;

“Documents requiring authentication by a company signed by the Director or Secretary do not need to be sealed”

It is not fatal, even if the lease was not sealed, did not render the documents invalid. The argument that the deponent was a lien to the information is also not sustainable given the fact that the affidavit mentions that she was the Mbale branch Manager of the applicant and had knowledge of the matter as such. She swore that the facts were in her knowledge under paragraph 6 that the properties are property of the objector/ applicant. I do not find the statement hearsay.

The applicants have further shown by evidence contained in the affidavit of **Edith Ampaire** in paragraph 9, 10, 11, and 12 that the value of the suit property is tainted with procedural errors and illegalities and the value of the property exceeds the decretal amount of 145, 277,500/= . This was not controverted by Respondents.

I also find that contrary to what is stated by **Mugobera Sam** in paragraph 8 of his affidavit in reply, the log book in respect of motor vehicle UAY 706S is in respect of motor vehicle which is listed under “F” warrant of attachment as one of the vehicles to be attached.

It is therefore immaterial to rely on the return of warrant to disclaim the applicant’s prayer of release of UAY 706S from attachment since a court order was already issued authorizing its attachment and can be attached any time on such authority.

From the finding above, I have been satisfied and I am in agreement with applicants that this application is proved as argued. This court is satisfied that all motor vehicles listed in this application as Tata trucks UAU 166G, UAU 071G, UAU 077G, UAY 706S, and UAU 078G are the property of the objector/ applicant or properties in which the holds substantial interest and should therefore not be liable to attachment.

The application is granted.

Given the history of this application and the equities involved, in the interest of justice each party will bear its own costs.

I so order.

Henry I. Kawesa

JUDGE

29.06.2017