

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI

HCT-LD-MA-0046 OF 2017

(Arising from MSD-CS-0075 OF 2013)

KYOGONZA FREDAPPLICANT

VERSUS

1. MAGADU JAMES }

2. KARATUNGA TADEO t/a

Bravo Auctioneers & court bailiffs }

3. KUNIHIRA ANNET }.....RESPONDENTS

4. MBABAZI MARGARET }

5. HARUNA MUGISHA }

BEFORE: HON. JUSTICE A. F. RUGADYA ATWOKI

RULING

This is an application brought by way of notice of motion under S. 33 Judicature Act, Ss. 34 and 98 Civil Procedure Act (CPA) and O. 52 r. 1 and 2 of the Civil Procedure Rules (CPR), for orders that, *‘the purported sale of the applicants immovable properties be nullified and or set aside’*. The said properties were specified on the order. The application was supported by the affidavit of the applicant.

At the commencement of the hearing of the application, Mr. Tugume Counsel for the respondents raised two preliminary points of law. first was that the matters complained of in the application arose from or involved execution proceedings from the judgment and decree of the Chief Magistrate. That being the executing court, such matters ought to be raised in that court. The present application was therefore brought in the wrong court, offending S. 34(1) of the CPA.

Secondly, Mr. Tugume submitted that the matters raised in this application were raised in a Revision Application No. 5 of 2014, and that application was completed and dismissed by this court. So this application offended the res judicata principle in S. 7 CPA.

in reply, the applicant who was self represented told court that the matters in the present application were never raised in the Revision application which Justice Byabakama dismissed. Secondly that the high court has inherent and supervisory powers over magistrates courts. Therefore the application was properly before the court.

This application was brought under S. 34 of the CPA. That section is headed, '*Questions to be determined by the court executing the decree*'. It is under Part III of the Act which is headed 'EXECUTION'. The said S. 34(1) reads;

'All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.'

There was no dispute that the parties herein were the same parties or were representatives or claimed from the same in respect of the decree in civil suit No. 075 of 2013 before the Chief Magistrate. The judgment and decree were passed by that court of the Chief Magistrate. That was the court executing the decree. From the provision of the law under which this application was brought, which I have reproduced above, that is the court clothed with jurisdiction to determine, at first instance, the matters relating to the execution, discharge or satisfaction of its decree.

The applicant sought from this court orders to revise or set aside the sale of immovable properties in execution proceedings from a decree of the Chief Magistrate in civil suit No. 75 of 2013. The matters which were raised in this application were some of those which the law enjoined the executing court to determine. They are not to be determined by a separate suit.

True, this court has supervisory powers over magistrate's courts. This court will exercise the same in appropriate circumstances. This however will not be done to assume or take over the

lower court's jurisdiction. For this reason alone, this application will be dismissed. There was a second point of law raised about the matter being res judicata. I do not find it necessary to get into that point, which could well be raised elsewhere.

The application is accordingly dismissed with costs to the respondents.

RUGADYA ATWOKI

JUDGE

22/11/2017.

Court: The Acting Registrar of the court shall read this ruling to the parties.

RUGADYA ATWOKI

JUDGE

22/11/2017.