

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
CIVIL DIVISION
MISCELLANEOUS APPLICATION NO. 801 OF 2018
AND
MISCELLANEOUS CAUSE NO. 66 OF 2019**

- 1. BERNARD MWEITEISE**
- 2. ASAPH NDAULA & ORS.....APPLICANT/JUDGMENT CREDITOR**

VERSUS

UGANDA TELECOM LTD.....RESPONDENT/JUDGMENT DEBTOR

RULING

BEFORE: LADY JUSTICE LYDIA MUGAMBE

a) Introduction

1. The Applicants are judgment creditors in High Court civil suit No. 135 of 2003 and civil appeal No. 230 of 2003 as former workers of Uganda Telecom Limited (UTL) which is the Respondent/judgment debtor therein. The judgment in the High Court was delivered in January 2013. In it, court declared that the judgment creditors are pensionable and ordered that the Respondent pays their pension arrears and continued monthly pension, general damages of 5,000,000/= each and interest of 18% per annum and costs.
2. Dissatisfied, the Respondent who was/is the judgment debtor appealed. The Court of Appeal dismissed the appeal and upheld the findings of the trial court above. The judgment creditors sought to execute the court of appeal decision by way of

garnishee. However, the parties reached a consent in which they agreed to stay execution pending the expiration of the Respondent's administration which at the time was until 22nd November 2018. This administration had been directed by the High Court on the application of the Respondent.

3. In Misc. Cause No. 317 of 2018, the judgment debtor applied for extension of its administration period. On 21st November 2018, court extended this administration period for one year, commencing on 22nd November 2018 and ending on 22nd November 2019.
4. Misc. application 801 of 2018 was filed by the judgment creditors/Applicants and Misc. application 66 of 2019 was filed by the judgment debtor/ Respondent. The judgment debtor (herein after referred to as Respondent) claims that the judgment creditors (hereinafter referred to as Applicants) cannot execute because they are bound by the administration deed. The Applicants disagree and assert that the administration itself is invalid, and in the alternative that they are not bound by the administration deed and are therefore free to execute their decree. The Applicants further argue that the order obtained by the Respondent in Misc. cause No. 317 of 2018 extending its administration period for one year without their consent or knowledge is invalid and of no effect.
5. In addition, the Applicants argue that the execution proceedings which were stayed against the Respondent in a consent order dated 29th October 2018 can proceed now on grounds that the agreed period expired.
6. In misc. application 801 of 2018, the Applicants sought orders that;
 - a. The Respondent is not in administration.
 - b. Alternatively, the judgment creditors are not party to the administration deed.
 - c. The order obtained by the Respondent in administration vide misc. cause no. 317 of 2018 extending its administration period for one year

without the consent or knowledge of the Applicants is invalid and of no effect and be set aside.

- d. That execution proceeding which were stayed against the Respondent in a consent order dated 29th August 2018 can now proceed.
 - e. That the consent order signed between the Applicants and the Respondent be set aside on grounds that it is invalid and/or expired.
7. Misc. application 801 of 2018 was supported by the affidavit of Mr. Asaph Ndaula one of the Applicants and the grounds were that; (i) the process of administration was commenced illegally; (ii) in the alternative the Respondent's administration expired a long time ago and all subsequent extensions and transactions relating to administration and in connection with the consent order dated 29th August 2018 are invalid and of no effect; and (c) it is in the interest of justice that the orders sought are granted.
8. Mr. Bemanya Twebaze the official receiver and administrator of the Respondent opposed the application through his affidavit in reply. He averred that at the creditors meeting of 10th May 2017, at Imperial Royale hotel, the majority of the Respondent's creditors including the Applicants voted in favour of him acting as the Administrator of the Respondent, placing it in administration and executing an administration deed in line with the proposals he presented. On 17th November 2017, in a creditor's meeting, the creditors voted in favour of variation of the administration deed and extension of the administration period to enable him conclude engagement with key investors. The orders that were granted by the High Court extending the Respondent's administration period were lawfully obtained in accordance with the applicable laws.
9. Further that clause one of the consent order executed between the Applicants and the Respondent clearly provides that the Applicant's claim vide civil appeal No. 230 of 2013 will be settled by the Respondent at the end of the administration period in accordance with the applicable laws and not 22nd November 2018. The fact that the administration period was extended for a further period of one year, by legal implication, the order staying execution was automatically extended until the termination of the administration period.

10. Miscellaneous cause No. 66 of 2019 was brought by the Respondent for:

- a. A declaration that the execution proceedings and resultant garnishee order nisi vide misc. application 235 of 2019 are an abuse of court process.
- b. A declaration that the Applicants are bound by the administration deed and barred by law from executing against the Respondent.
- c. An order setting aside the garnishee order nisi issued by this court vide miscellaneous application No. 235 of 2019 and
- d. costs of this application.

11. The application was supported by the affidavit of Mr. Bemanya Twebaze, the Administrator of the Respondent and the grounds were that; (i) the Respondent is still under administration until 22nd November 2019; (ii) the Applicants' claim arose before the Respondent was placed in administration; (iii) the Applicants submitted their claim for pension and general damages to the Administrator which has been accepted and is pending payment in accordance with the applicable laws; and (iv) the Applicants are bound by the Respondent's administration deed and barred by law from commencing or continuing execution proceedings or other legal process or levying distress against the judgment debtor or its property.

12. Misc. cause No. 66 of 2019 was opposed by the Applicants through the affidavit in reply of Ms. Peace Ninsiima - one of the creditors. She averred that the Respondent had no locus standi to set aside a garnishee order nisi. The Respondent was taking advantage of the creditor's good will to illegally continuously extend the administration claiming they are bound by the administration deed whereas not. The creditors debt was never verified by the Respondent and no evidence has been led by the Respondent to confirm verification of the debt. The court was right in issuing the garnishee order and it should be made absolute so that the judgment creditors can enjoy the fruits of their judgment.

b) Analysis

13. I have read all the pleadings and submissions of the parties. To avoid confusion, in this analysis, a reference to the Applicants is a reference the Applicants in Misc

application No. 801 of 2018 and the Respondent reference is to Uganda Telecom Limited (herein after UTL) and/or the Official receiver who is its provisional administrator. The Applicants instituted garnishee proceedings against UTL in Misc application No. 1827 of 2018 in the Execution Division of the High Court. A consent was reached between the parties on 28 August 2018, in which they agreed, among others, that the Applicants file their claim in respect of civil suit No. 230 of 2013 with the Respondent administrator to be settled at the end of the administration period and in accordance with applicable law.

14. The Applicants agreed to withdraw the garnishee proceedings; UTL agreed to withdraw misc. applications 1852 and 1851 both of 2018 in which they sought stay of execution of the appeal judgment in civil appeal no. 230 of 2013 where the Applicants had been allowed to be paid their pension in accordance with the Auditor General's report and as calculated by M/s Matovu and Matovu Advocates or ACTSERV for those not included in the Auditor General's report, as found by the High Court.
15. The administration period in force at the time was running until 22 November 2018 and it was granted by this court. Before this period lapsed, the Respondent administrator applied to this court for extension of this administration period vide Misc cause 317 of 2018 on 16 November 2018. On 21 November 2018, after hearing the Respondent, finding good cause and in the interest of justice, this court extended the administration period for one year until 22 November 2019.
16. During the pendency of this extended administration, the Applicants filed Misc application 235 of 2019 against UTL in the Execution Division. In it, on 18 March 2019, they obtained a garnishee order nisi attaching the Respondent bank accounts for the realization of the decretal sum of 287,066,256,207/= in civil suit 135 of 2003. Inevitably, this crippled the daily operations of the Respondent. Hence their filing of Misc application No. 66 of 2019 seeking to set the garnishee order and proceedings aside.
17. It is not in dispute that an administration process for the Respondent was commenced by this court through the appointment of the official receiver as the interim

administrator. If the Applicants have any issues with such appointment or extension they should file a formal application for proper determination. To the extent the administration was granted and extended by court and there has been no challenge of the same in a formal application before the matters now in court, I am disinclined to consider the Applicants' contention that the official receiver cannot be provisional receiver for so long.

18. Moreover, when I look at the construct of the consent in misc. application 1827 of 2018, the Applicants accepted to submit to the administration process. It is therefore unreasonably canny and unacceptable for them to attempt to disregard the administrator recognized by court as part of that administration, simply to suit their choice of action at this stage.

19. Section 174 of the Insolvency Act, 2011 and Regulation 161 of the Insolvency Regulations, 2013 provide the procedure for removal of a provisional administrator from office. The Applicants need to formally apply by motion if they wish to challenge the provisional administrator's stay in office.

20. For clarity, this court recognizes the administration of UTL was extended with the official receiver as the provisional administrator of the Respondent until 22 November 2019 or otherwise directed by court. The administration deed therefore remains in force until such period lapses.

21. Clause 6 of the administration deed is constructed in exact terms as section 164 of the Insolvency Act. Under clause 6(c), the administration deed between the parties before me binds the Applicants as creditors, the Respondent prior to commencement of the deed and the official receiver as the administrator, UTL and its directors and shareholders in relation to claims arising on or before the day of execution of the deed. Clearly the Applicants claim arose before the execution of the deed. The Applicants are therefore bound by the deed.

22. Under Section 164 (2) (a) of the Insolvency Act, a person bound by a deed shall not make an application for the liquidation of a company or proceed with an application (b) except with the leave of court and in accordance with the terms as the court may impose.
23. Under clause 6 (d), subject to the Insolvency Act, the company or the administrator may plead this deed against a creditor as an absolute bar and defence to legal proceedings brought or made at any time in relation to a claim. Under 6 (e), a secured creditor who voted in favor of the resolution for execution of an administration deed and shall not exercise the power of enforcement of a charge over the company property during administration.
24. By virtue of the High Court and Court of Appeal judgments in favour of the Applicants, they hold a charge over the property of the Respondent. They are therefore secured creditors. As such under clause 6 (e) and (d) of the deed and section 164 of the Act, they were barred from instituting the execution proceedings in which they obtained the garnishee order in issue. These execution proceedings and resultant garnishee order were therefore irregularly obtained or granted and must be set aside.
25. This court also considers that the Applicant's institution of execution proceedings fully aware of the extended administration was an attempt to sabotage the administration process. It was in abuse of court process. This court can competently set aside such execution process in the interest of justice under Section 98 of the Civil Procedure Act and section 33 of the Judicature Act.
26. Based on all the above, the Applicants issues are resolved in the negative. The Respondent's issues are resolved in the affirmative. The Applicants misc. application 801 of 2018 is dismissed and the Respondent's application 66 of 2019 is allowed.
27. However, considering the nature of this case, it would be unfair to sanction the Applicants who are judgment creditors in costs. So, each party shall bear its own costs.

28. Before I take leave of this case, I wish to direct the Respondent Administrator to prioritize the payment of the Applicant's decretal sum.

I so order.

Lydia Mugambe

Judge

7th June 2019.