



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Miscellaneous Civil Application No. 174 of 2016

In the matter between

1. PAKLAKI HARRIET	}	APPLICANTS
2. NORBERT ADYERA	}	

And

1. WATOTO CHILD CARE MINISTRIES	}	JUDGMENT CREDITOR
2. ODOCH BOSCO OLAK	}	JUDGMENT DEBTOR

Heard: 12 February 2019

Delivered: 28 February 2019

Summary: release of a chattel from attachment in execution.

RULING

STEPHEN MUBIRU, J.

Introduction:

[1] This is an objector application for setting aside an order of attachment and sale of motor vehicle, Isuzu Giga registration Number UAN 486 P. It is made under the provisions of Order 22 rules 55 and 56, and Order 52 rules 1, 2 and 3 of *The Civil Procedure Rules*. The applicants contend that the property in issue is not subject to attachment in so far as it is not the property of the judgment debtor but rather that of the applicants, having purchased it jointly from the judgment debtor

on 4th December 2016. It is claimed that at the time of the attachment, the applicants were in full and exclusive possession of the truck.

- [2] The background to the application is that the judgment creditor sued the judgment debtor and the decision was in favour of the former against the latter. In a bid to recover the decretal sum of shs. 466,200,000/=, the judgment creditor applied for execution of the decree by way of attachment and sale of the judgment debtor's motor vehicle Isuzu Giga registration Number UAN 486 P. The proposed sale of the truck was advertised by way of a notice published in the Rupiny Newspaper of 14th to 20th December, 2016 whereupon the applicants on 22nd December, 2015 secured an interim order of stay of execution pending the disposal of this application. The truck has henceforth to-date been in custody of Gulu Central Police Station.
- [3] The background to the application is that the applicant is one of the lecturers at the respondent university. On 25th March, 2011 he was admitted to the respondent's programme of study by thesis, leading to the award of a Doctorate of Philosophy in Epidemiology. His topic, "The Epidemiology of Pyomyositis in relation to HIV infection Status," was approved and two supervisors were assigned to him. On 15th April, 2014 he submitted his research findings to the respondent's Institute of Graduate Studies and Staff Development whereupon it was rated as a pass by a team of three examiners. On 5th March, 2015 he defended his thesis before a panel of five examiners and it was rated as a pass with significant corrections.
- [4] The hearing proceeded ex-parte since none of the respondents was in court on the day the application came up for hearing on 14th March, 2014 yet they had been served and a return of service filed in court.

The applicant's arguments:

- [5] In support of the application, Counsel for the applicants, submitted that the applicants are bona fide purchasers and owners of the said truck since at the time of purchase they were not aware of the underlying court proceedings against the seller. Odoch Bosco Olok. At the time of attachment (11th December, 2016) was in their possession and control. They paid a total price of shs. 50,000,000/= for the truck in three instalments of shs. 20,000,000/= on 16th October, 2016; shs. 20,000,000/= on 16th November, 2016, and shs. 10,000,000/= on 4th December, 2016. It was therefore not available for attachment and it should be released from attachment.

General principles:

- [6] Under section 44 of *The Civil Procedure Act*, property liable to attachment and sale in execution of decree includes land belonging to the judgment debtor, whether it is held in the name of the judgment debtor or by another person in trust for him or her or on his or her behalf. In the instant case, it is contended by the applicants that by reason of the transaction of purchase that took place a week or so before the warrant of attachment was issued, the property in question no longer belonged to the judgment debtor and as such it was not available for attachment in execution of the decree issued against him.
- [7] In order to succeed, the applicants as objectors must prove that at the time of the attachment; (1) they had some interest in the property attached, (2) the property attached was in their possession, (3) they were holding possession of the attached property on their own account and not on account of the Judgment debtor, and / or (4) that the property was not in possession of the Judgment debtor or some person in trust for her; or (5) that the property was not in occupancy of a tenant or other person paying rent to the Judgment debtor; or finally (6) that although being in the possession of the Judgment debtor at such time, it was so in the possession of the judgment debtor not on the judgment

debtor's own account or as the judgment debtor's own property. The crucial consideration therefore in applications of this nature is one of possession of the property at the time of the attachment.

- [8] If the Objector was in possession, or if some other person was in possession on account of the Objector, then the property should be released from attachment (see *Haria and Co. v. Buganda Industries Ltd.* [1960] EA 318; *Joseph Mulenga v. FIBA (U) Ltd*, H. C. Miscellaneous Application No. 308 of 1996; and *Betty Namugenyi v. Daisen Co Ltd and another and Forward International Co Ltd (Objector)* H.C Miscellaneous Application No. 522 of 2005).

A determination of possession not ownership.

- [9] It is apparent from the facts of this case that the ownership of this property is contested. The respondents claim that the sale was fraudulent. In determining whether or not a transfer in these circumstances was fraudulent consideration may be given, among other factors, to whether: (i) the transfer was to an insider; (ii) the debtor retained possession or control of the property transferred after the transfer; (iii) the transfer was disclosed or concealed; (iv) before the transfer was made, the debtor had been sued or threatened with a suit; (v) the transfer was of substantially all the debtor's assets or essential assets of the business; (vi) the debtor absconded; (vii) the debtor removed or concealed other assets; (viii) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred; (ix) the debtor was insolvent or became insolvent shortly after the transfer was made; (x) the transfer occurred shortly before or shortly after a warrant of attachment was issued; and (xi) the debtor transferred the essential assets of the business to a lien who transferred the assets to an insider of the debtor. A typical fraudulent transfer involves a judgment debtor that transfers personal or business property into the name of his or her spouse, parent, child or other family member. There should be evidence of apparent lack of arms length dealing.

- [10] Although the sale a week before the attachment is suspicious, there is no evidence before me to show that the applicants had any knowledge of the decree passed against the seller at the time of the transaction. There is nothing to show that this was not an arm's length transaction. Moreover, a decision in an objector application is not a decision as to title to the property in dispute or a declaration as to the rightful owner thereof.
- [11] Where an objector application is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute (see Order 22 rule 60 of *The Civil Procedure Rules*). Objector proceedings are all about possession while questions of title will be settled in a separate suit by the judgment creditor against the successful objector. At the end of the objector proceedings, the party interested in proving title must sue in order to determine the issue of title to the property as the order made under the rule is only provisional (see *Uganda Mineral Waters Ltd v. Amin Pirain and another* [1994-5] HCB 87).
- [12] Having evaluated the material before me and carefully considered the submissions of counsel for the applicants, I find that the applicants have proved that at the time of attachment, (a) they had interest in the property attached as purchasers of the truck; (b) the property attached was in their physical possession and control; (c) the applicants were holding possession of the attached property on their own account and not on account of the Judgment debtor; and finally (d) the property was not in possession of the Judgment debtor or some person in trust for him.
- [13] The applicants had actual physical possession and exercised control over the truck in the assumed character of owners and had exercised peaceably the ordinary rights of ownership thereof, without evidence of prior knowledge of the proceedings between the judgment debtor and judgment creditor.

Order:

[14] It is for those reasons that I set aside the order of attachment and sale of the truck, with costs to the applicants. It is ordered that the truck be released from attachment forthwith.

Stephen Mubiru
Resident Judge, Gulu

Appearances:

For the applicants : Mr. Doi Patrick.

For the respondent : Mr. Mulongo Peter.

HIGH COURT AT GULU