

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS CAUSE NO. 03 OF 2020**

**JASBIR SINGH LIKHARI ::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE: HON. LADY JUSTICE ESTA NAMBAYO**

**RULING**

Jasbir Singh Likhari (herein after called the Applicant) has brought this application against the Attorney General (hereinafter called the Respondent).

The Application is brought by **Notice of Motion under Article 23(1) a and 274 of the Constitution, Sections 2,3 and 7 of the Foreign Judgments (Reciprocal Enforcement) Act Cap 9, Sections 2 and 9 of the Extradition Act Cap 117, Section 98 Civil Procedure Act, S. 33 Judicature Act and Order 52 Rule 1,2 and 3 of the Civil Procedure Rules** seeking for declarations of this court that;

1. The international warrant of execution issued in execution of a judgment and decree in Execution Case No. 195/2019 vide Michael Lopa Sebit (Judgment Creditor) versus Jasbir Singh Likhari (judgement Debtor) sought to be enforced against the Applicant by way of his arrest and transfer to South Sudan is illegal and unenforceable.
2. There is no validly recognized judgment arising from proceedings in Execution Case No. 195/2019 upon which execution by way of arrest and transfer of the Applicant to South Sudan can issue and be enforced by the Respondent and or its agents including Interpol.
3. The International warrant of execution of a civil Judgement cannot give rise to extradition of the Applicant under the laws of Uganda, rendering the intended action by Interpol illegal
4. An order restraining the Respondent its agents, institutions including the Uganda police and Interpol from executing the impugned international

warrant of execution against the Applicant by way of arrest and transfer or extradition to Southern Sudan in execution of the judgment and decree of the Juba County Court

5. Costs of the application

The grounds of this application are laid out in the affidavit in support of the application by ***Jasbir Singh Likhari*** but briefly are that;

- i. The Applicant is currently the subject of an international warrant of execution issued by the Juba County Court in South Sudan arising out of execution proceedings vide: Execution No. 195 /2019 Michael Lopa Sebit (Judgment Creditor) versus Jasbir Singh Likhari (Judgment Debtor)
- ii. The said execution arises out of ex-parte proceedings and judgment that were passed by a County Court in Juba South Sudan against the Applicant who is resident in Uganda.
- iii. The judgment and decree have not been recognized in Uganda under the law thereby rendering any form of execution against the Applicant by way of international warrant of arrest in execution illegal
- iv. The actions of Interpol and the Uganda Police attempting to execute the said warrant against the Applicant by arrest and deportation are illegal and would amount to illegal extradition of the Applicant which offends the applicable laws.
- v. This Court has discretionary powers to grant the orders sought and it is in the interests of justice that this Honorable Court be pleased to grant the orders sought.

The Respondent did not file its affidavit in reply.

The brief background of this case is that on the 21/12/2019, the Applicant was summoned to Interpol. When he got there he was notified that there was an international warrant of arrest against him from Southern Sudan. He was detained and referred to Jinja Road Police Station. At Jinja Rd Police Station, the Applicant came to learn that his arrest was in respect of an execution of a court judgment/decreed from Juba County Court in South Sudan. The Matter had proceeded ex-parte against him. The Judgment Creditor; Michael Lopa Sebit was known to him and he also knew the Applicant's address in Kampala. The Applicant sought for a police bond which was granted to him. While on Police bond he filed

this case in Court against the Respondent. He still reports to police in answer of his police bond.

Learned Counsel **Joseph Kyazze** appears for the Applicant, While **Ms. Namara** State Attorney appears for the Respondent.

When the matter came up for hearing Learned Counsel Joseph Kyazze pointed out that the application is based on matters of law and that is why the Respondent did not file an affidavit in reply. Counsel submitted that the only issue for this court to determine is whether the international warrant of arrest issued by Juba County Court in South Sudan can be enforced and executed in Uganda directly by Interpol and the Uganda Police.

Counsel explained that under ***S. 3 of The Foreign Judgments (Reciprocal Enforcement) Act***, it is a mandatory requirement that a judgment creditor must have applied to a High court by Notice of motion supported by an affidavit for registration of the foreign judgment before it is executed and secondly, the Judgment Creditor must prove that there is a reciprocal arrangement between Uganda and South Sudan and that the judgment and decree are capable of being recognized by the High Court in Uganda.

Counsel also relied on rules **5,11 and 12 of the Foreign Judgments Reciprocal Rules** and submitted that until such a judgment is recognized by the High Court in Uganda no execution can issue against the judgment Debtor.

Learned Counsel went on to explain that according to the evidence of the Applicant, Interpol and Uganda Police arrested the Applicant on a warrant of arrest premised on a decree that is not recognized by law in this Country. The procedures under the Act and the Rules governing this matter were not complied with. The arrest and keeping of the Applicant on a police bond on the basis of an illegal international warrant of arrest in execution of a decree not registered is unlawful and should be declared as such.

Learned Counsel also pointed out that Interpol misconstrued a warrant of execution to mean an international warrant of arrest under the Extradition Act. Under that Act, the police would proceed under S.28 which relates to commission of grave criminal offences not judgments or decrees in a civil claim. There is no compliance with s. 28 & 29 of the Extradition Act to warrant Execution/ Arrest of

the Applicant. Counsel prayed that this Court be pleased in exercise of the inherent powers of this court under **s. 98 CPA** and **s.33 JA** to grant the declarations sought in the application and specifically to vacate the bond imposed on the Applicant and his sureties, including his wife and; Interpol be directed to surrender their passports as there is no reason for their arrest.

In reply, Ms. Namara informed court that the Attorney General does not oppose the application. She submitted that the matters brought before court are matters of law which have not been complied with by the Judgment Creditor. And the Attorney General is not in position to ably defend the matter.

She explained that the Attorney General admits that the acts of Interpol and the Uganda Police arresting the Applicant, keeping him on police bond, withdrawing his passport and that of his surety are illegal and unlawful and on that basis the Attorney General does not oppose the application and awaits the orders of this court.

### **Court**

I have carefully looked at the submissions of counsel for both parties.

**S.3(1) of the Foreign Judgments (Reciprocal Enforcement) Act** provides that;

***“A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the High Court at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered.”***

The above provision of the law is clear on the procedure to be followed on enforcing foreign judgments in Uganda.

From what has been presented before this court, the case that is for execution arises out of a civil matter ***vide Execution case No. 195 /2019 Michael Lopa Sebit (Judgment Creditor) versus Jasbir Singh Likhari (Judgment Debtor)*** that was handled by a juba County Court. When the judgment creditor brought the judgment and decree to Uganda for execution, he did not register the main with

the High Court here in Uganda before proceeding with the execution process. No evidence of registration of the judgment here in Uganda has been showed to this Court as having been presented to Interpol or the Uganda Police for execution against the Applicant as laid out under S.3(1) of the of the Foreign Judgments (Reciprocal Enforcement) Act cited above.

I am persuaded by the finding of *Hon. Justice David Wangutusi* in ***Cs No. 218 of 2012 (Commercial Division) Leaf Tobacco and Commodities Uganda Ltd –versus- Commissioner of Customs, Uganda Revenue Authority & Mastermind Tobacco (k) Ltd that:***

***“It seems from the proceedings that the Plaintiff wanted to use the Southern Sudan Court orders in Uganda and that Uganda Revenue Authority should enforce the Southern Sudan Court orders. In my view that is not how Foreign Judgments are enforced. They could be enforced here only after registration through a court proceeding which was not done.”***

I agree with counsel for the Applicant that it was wrong for Interpol and the Uganda Police to arrest the Applicant on the warrant of Arrest in execution of a judgment and decree that were not registered in Uganda. In the circumstances, this application is allowed with the following declarations:

- I. The international warrant of execution issued by a Juba County court in South Sudan for execution of the judgment and decree in Execution ***Case No. 195/2019 Michael Lopa Sebit (Judgment Creditor) versus Jasbir Singh Likhari (judgement Debtor)*** sought to be enforced against the Applicant in Uganda by way of his arrest and transfer to South Sudan is illegal and unenforceable.
- II. There is no validly recognized judgment and decree in Uganda arising from proceedings in ***Execution No. 195/2019 Michael Lopa Sebit (Judgment Creditor) versus Jasbir Singh Likhari (judgement Debtor)*** upon which execution by way of arrest and transfer of the Applicant to South Sudan can issue and be enforced by the Respondent and or its agents including Interpol.

- III. The International warrant of execution of a civil Judgement cannot give rise to extradition by Interpol
- IV. An order is hereby issued against the Respondent, its agents and institutions including Interpol and the Uganda Police restraining them from executing the impugned international warrant of execution against the Applicant by way of arrest and transfer or extradition to Southern Sudan.
- V. The responsible officer at Jinja Rd Police Station is hereby directed to return the passports of the Applicant and his sureties forthwith.
- VI. The State Attorney having admitted before this Court that Interpol and Uganda Police were wrong to arrest the Applicant, I would take it that they acted without seeking advice from the Respondent. I will therefore not condemn the respondent to costs of this application. I would therefore order that each party will bare its own costs. I also take this opportunity to advice Interpol and the Uganda Police to always seek advice from the respondent on legal matters to avoid such embarrassment in future. The Respondent is the chief Government advisor on legal matters.  
I so Order

**Esta Nambayo**

**Judge**

**07/02/2020**