

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS APPEAL NO. 007 OF 2022
(ARISING FROM MISC. APPLICATION NO. 341 OF 2022)
(ARISING FROM EMA NO. 55 OF 2022)
(ARISING FROM MISC. APPLICATION NO. 95 OF 2022)
(ARISING FROM MISC. CAUSE NO. 31 OF 2022)

PETER ALLAN MUSOKE (ADVOCATE) ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. ALIBHAI HASSANALI GULAMALI

2. I & M BANK (U) LIMITED ::::::::::::::::::::::::::::::::::: GARNISHEES

AND

AKBER JETHA

(As Administrator of the Estate

of the Late Hussein Jetha) ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Appellant, being dissatisfied with the ruling of the Learned Assistant Registrar, brought this appeal under the provisions of Order 50 rule 8 and Order 52 rules 1 and 2 of the Civil Procedure Rules (CPR) seeking for orders that: -

- (a) The Assistant Registrar's decision in Misc. Application No. 0341 of 2022 be set aside.

(b) All monies which were received by the 1st Garnishee as a bailee for the Respondent/judgement debtor through bank account number 36939901010521 held with the 2nd Garnishee be attached to answer and to satisfy the orders of the court given in Misc. Application No. 095 of 2022 (Arising from Misc. Cause No. 31 of 2022).

[2] The appeal is supported by an affidavit deponed to by Peter Allan Musoke (the Appellant) which verifies the grounds of the application. Only the 2nd Garnishee made and filed a reply to the appeal through an affidavit in reply deponed to by Lusiba Muhammad, a Senior Legal Officer of the 2nd Garnishee.

The Background to the Appeal

[3] The appellant filed Misc. Application No. 341 of 2022 seeking attachment of monies belonging to the Respondent (judgement debtor). The Appellant (then Applicant) alleged that the subject monies were paid to the Respondent/judgement debtor through the 1st Garnishee (acting as a bailee) on bank account number 36939901010521 held by the 2nd Garnishee for the benefit of the Respondent/ judgment debtor. The Appellant had sought the attachment in order to answer and to satisfy the order of court given in Misc. Application No. 095 of 2022 (Arising from Misc. Cause No. 31 of 2022).

[4] On 13th July 2022, the court granted a garnishee order nisi attaching a sum of UGX 75,245,000/= or its equivalent in US Dollars and fixed the matter for 21st July 2022 for consideration as to whether the order nisi could be made absolute. When Misc. Application No. 341 of 2022 was called for hearing on 21st July 2022, the Respondent/judgement debtor and the 1st Garnishee neither appeared nor were they represented in court, despite evidence of service of process. The 2nd Garnishee attended court and opposed the making of the garnishee order nisi absolute. Upon oral submissions by Counsel for the Applicant/judgement creditor and for the 2nd Garnishee, the Assistant

Registrar dismissed the application and, thereby, lifted the order nisi against the garnishees. The Applicant (now Appellant) thus brought this appeal.

The Grounds of Appeal

[5] The Appellant raised three grounds of appeal, namely;

(i) The Learned Assistant Registrar erred in law and in fact when she held that it was improper to attach an account of a person who was only an agent and not a principal in a transaction.

(ii) The Learned Assistant Registrar erred in law and in fact when she applied a principal - agent relationship to garnishee proceedings.

(iii) The Learned Assistant Registrar erred in law and in fact when she lifted the garnishee order nisi against the garnishees.

Representation and Hearing

[6] At the hearing, the Appellant was represented by Mr. Swabur Marzuk and Mr. Bernard Mabonga while the 2nd Garnishee was represented by Ms. Janat Murungi holding brief for Mr. Nicholas Mwasame. Counsel agreed to make and file written submissions which were duly filed and have been adopted and considered by the Court.

Submissions by the Appellant's Counsel

[7] Counsel for the Appellant set out the law governing garnishee proceedings and submitted that the judgement creditor having proved that a decree or an order was issued by the court, the said decree or order is still unsatisfied to an amount granted by the court, and there is a third party (1st Garnishee) within the jurisdiction of court who is indebted to the judgement debtor as a bailee of money through a conveyance transaction. Counsel submitted that such a debt can be attached to answer a decree or order together with the costs of the garnishees proceedings. Counsel further submitted that following a conveyance agreement between the respondent/ judgement debtor and Ladha Kassam & Co. Ltd, as the vendors, and a one Moses Mugumya, as the purchaser, for land

comprised in FRV WAK 6324 Folio 7 Busiro Block 408 Plot 209, at Sisa, the proceeds of the sale were remitted to bank account number **36939901010521** held with the 2nd Garnishee in the name of the 1st Garnishee. Counsel stated that when the Respondent refused and neglected to pay his professional fees, the Appellant filed **Misc. Application No. 095 of 2022** with a view to place his Advocate-client bill of cost before a taxing master. The application was granted, with costs, by the court and the amounts taxed and allowed by court are yet to be satisfied by the Respondent/ judgement debtor.

[8] Counsel further submitted that the Appellant's evidence as to the 1st Garnishee's receipt of the said money through his account held by the 2nd Garnishee was never disputed by the garnishees or the Respondent/ judgement debtor. Neither does the 1st Garnishee deny that he is still holding the said monies. The 2nd Garnishee, too, does not dispute the holding of bank account number 36939901010521 of the 1st Garnishee, or the fact that monies to a tune of US Dollars 963,000 was remitted to the said account by a one Moses Mugumya. Counsel submitted that the attachment of a redacted and or mutilated bank statement of the 1st Garnishee account to the affidavit in reply by the 2nd Garnishee discloses an intention by the 2nd Garnishee to obstruct the process of court by concealing details of the 1st Garnishee account. Counsel argued that pursuant to the provisions of Order 23 rules 1, 2, & 4, the 2nd Garnishee, invariably, became a necessary party to the execution proceedings by garnishee process. It is, thereby, of no consequence that the 2nd Garnishee does not hold an account in the name of the judgement debtor.

[9] The Appellant's Counsel, therefore, concluded that, in the face of garnishee proceedings, all monies belonging to the judgement debtor and held by any person are susceptible to being attached to satisfy the judgement debtor's liability. Indeed, even if it were true that the 1st Garnishee was an agent of the judgement debtor (which he is not) and was holding monies that belong to the judgement debtor (as he still does), those monies would be applied, and are, in

the case before the court, available to satisfy the judgment debtor's outstanding liability from the orders of this court. Counsel therefore submitted that the Learned Assistant Registrar was wrong to have declined to make the garnishee order nisi absolute and to have lifted the garnishee order nisi. Counsel prayed that this court should find fault with the decision of the Learned Assistant Registrar and, thereby, set it aside. Commensurately, the court should proceed to make absolute, as against the 1st and 2nd Garnishees, jointly and or severally, the Garnishee order nisi.

Submissions by the 2nd Garnishee's Counsel

[10] In reply, citing the provision under Order 23 rule 1 of the CPR and relying on the definition of a "debt" from the Black's Law Dictionary, 8th Edition, page 432, Counsel for 2nd Garnishee submitted that the judgment debtor in this case does not hold any account with the 2nd Garnishee and, therefore, the Appellant cannot recover from the same. Counsel argued that the provisions of the law are clear as to who a creditor can recover a debt from and the 2nd Garnishee is not such a person in the present case since there is no contractual relationship or legal obligation established warranting any payment to the judgment debtor. Counsel further argued that there are no debts owing or accruing to the judgment debtor from the 2nd Garnishee. Counsel argued that even such debts existed, the 2nd Garnishee is not in position to ascertain whether there is any relationship between the 1st Garnishee and the judgment debtor. According to the garnishee order nisi, the 2nd Garnishee was required to ascertain whether it held monies on the account of the judgment debtor and not the 1st Garnishee.

[11] Counsel also submitted that the 2nd Garnishee was never privy to any agreement between the judgment debtor and the 1st Garnishee and it is therefore not true that the bank never denied receipt of money from the judgment debtor to the 1st Garnishee's bank account. Counsel submitted that the bank account statement attached to the affidavit in reply is a true reflection

of the 1st Garnishee's account and the 2nd Garnishee has not engaged in any mutilation of the bank statement or obstruction of the process of recovery. Counsel argued that the 2nd Garnishee was a wrong party to the garnishee proceedings and the process taken by the Appellant is unlawful and will occasion a miscarriage of justice to the 2nd Garnishee. Counsel also stated that when the garnishee order was dismissed on the 22nd July 2022, the 1st Garnishee withdrew sums on his account and the bank cannot be held liable for the withdraws after the dismissal. Counsel prayed to court to find that the Registrar rightly lifted the garnishee order nisi and dismiss the appeal with costs.

[12] Counsel for the Appellant made and filed submissions in rejoinder which I have also taken into consideration.

Consideration of the Grounds of Appeal

[13] Counsel for the Appellant argued grounds 1 and 2 together and ground 3 separately. On his part, Counsel for the 2nd Garnishee argued all the three grounds jointly. Since the three grounds are interconnected and revolve around the same issue, I will address all the 3 grounds at once.

[14] The law governing garnishee proceedings is set out under Order 23 of the CPR. Under Order 23 rule 1 of the CPR, it is provided as follows:

“Order for the attachment of debts.

(1)A court may, upon the ex parte application of a decree holder, and either before or after an oral examination of the judgment debtor, and upon affidavit by the decree holder or his or her advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the jurisdiction, order that all debts owing or accruing from the third person (hereafter called “the garnishee”) to the judgment debtor shall be attached

to answer the decree together with the costs of the garnishee proceedings.”

[15] Counsel for the 2nd Garnishee has placed reliance on the use of the term “debt” and “indebted” in the above provision to argue that the said provision does not apply to the circumstances of the present case where there was no creditor-debtor relationship between the judgment debtor and the Garnishees. Counsel argues that for that reason, a garnishee order could not rightly issue against the 2nd Garnishee. According to the **Black’s Law Dictionary, 8th Edition, at page 432**, a “debt” is defined as a specific sum of money due by agreement or otherwise. Counsel also referred the Court to the definition of the term “indebted” according to the **Ballentine’s Law Dictionary, 3rd Edition**, as owing a sum of money upon a certain and express agreement.

[16] On the other hand, Counsel for the Appellant argued that the established meaning of a “garnishee” and “garnishee proceedings” clearly indicate that the process is not restricted to debts or indebtedness in the ordinary sense but bears a wider import. According to the **Black’s Law Dictionary, 9th Edition, 2009, at page 749**, a “garnishee” is defined as **“a person or institution (such as a bank) that is indebted to or is a bailee for another whose property has been subjected to garnishment.”** According to the **Halsbury’s Laws of England, 4th edition, Vol. 17, par. 525 at page 325**, a garnishee proceeding is a process of enforcing a money judgement by seizure or attachment of the debts due or accruing to the judgement debtor which forms part of the judgement debtor’s property available in execution. The Black’s Law Dictionary underscores the fact that a garnishee includes one who has money or property in his possession belonging to a defendant, or who owes the defendant a debt, which money, property, or debt is attached.

[17] The above authority cited by learned Counsel for the Appellant represents the correct position of the law on the garnishee process. It is clear to me that

although the CPR in Order 23 rule 1 uses the terms “debt” and “indebted”, the said terms are not used in the narrow sense of a civil debt. Rather, it is used in the sense of holding money or property on behalf of a judgment debtor. Like a banker-customer relationship discloses a creditor-debtor relationship, it is also correct to say that a Bailor-Bailee relationship in the sense of garnishee proceedings disclose a creditor- debtor relationship. In my view, the rationale is not difficult to find. As an example, when a person deposits money in the bank, by agreement he/she is not lending to the bank but the bank is holding the person’s money until when the person wishes to pick it. As such, the depositor may choose to deposit the money and withdraw it immediately. In other words, the deposited sum is not owing upon a certain and express agreement within the meaning of a debt. Yet the law imputes a creditor-debtor relationship between the customer and the bank. It is for that reason that a garnishee order issued to a bank raises no questions despite the fact that the bank is literally not indebted to the customer.

[18] As such, like a bank is deemed to be indebted to the customer, so is a Bailee – a person holding money or property for the benefit of a judgement debtor. It follows therefore that the concern of garnishee proceedings is not to establish the capacity in which a person is holding the money or property of the judgment debtor. Rather the principal concern of the proceedings is to trace the existence of money that belongs to a judgment debtor. Once such existence is traced, all the applicant/judgment creditor has to prove is whether the money belongs to the judgment debtor and the holder is holding it for the benefit of the judgement debtor. When such a fact is proved, the capacity in which the garnishee is holding the money then becomes irrelevant.

[19] It is for that reason that I agree with the Appellant’s Counsel that the Learned Assistant Registrar misdirected herself when she found that it was improper to proceed with attachment of an account of a person who was only an agent and not a principal in the transaction. The account in the garnishee

bank does not have to be of the judgment debtor for it to be subject to garnishee proceedings. It just has to be an account that holds money belonging to or for the benefit of the judgment debtor. In such a situation, the duty of the garnishee would be to disprove the allegation of ownership of the money and not to question the relationship between the holder of the account and the judgment debtor.

[20] In the instant case, the Appellant brought the garnishee proceedings against the two garnishees on purpose. The 1st Garnishee held the money that was believed to belong to the judgment debtor on his account. The account was held in the 2nd Garnishee bank. This represents a proper role of the garnishee proceedings; to trace existence of the money of a judgment debtor. As an example, if the money was kept by the 1st Garnishee with a friend or a cashier at a work place, and the same is traced, a judgment creditor would sustain an action for a garnishee order against the 1st Garnishee and such a friend or cashier as a 2nd Garnishee. That is the position the 2nd Garnishee finds itself in the present case.

[21] It was argued for the 2nd Garnishee that in absence of a customer-bank relationship, the bank had no duty to disclose facts pertaining to the 1st Garnishee's account. This, in my view, manifests another misunderstanding of the garnishee process. The order nisi served included both the holder of the account and the bank. It did not matter whether the account was in the name of the judgment debtor. What mattered was that the 1st Garnishee's account was subject of a court order. The role of the 2nd Garnishee was to bring the order to the attention of its customer (1st Garnishee). It was the 1st Garnishee's duty to show to court whether he held money that belongs to the judgment debtor or not. The duty of the 2nd Garnishee was to present to the court the affairs on the subject account. It was not the 2nd Garnishee's role to prove whether the money in issue was attachable or not. In trying to do so, the 2nd Garnishee misfired and took on responsibility that was not bestowed upon it. It

is probably for that reason that the 1st Garnishee opted to remain in his comfort zone and neglected to discharge the burden that was shifted to him; that is, to prove whether the money belonged to the judgement debtor or not. As I have said, the 2nd Garnishee had neither the duty nor the capacity to discharge this burden.

[22] That being the case, the evidence by the Appellant/judgment creditor remains undisputed to the effect that the 1st Garnishee holds money on his account in the 2nd Garnishee bank to the benefit of the judgement debtor. In view of the legal position set out above, such money is attachable pursuant to garnishee proceedings. The Learned Assistant Registrar therefore acted in error when she vacated the garnishee order nisi instead of making the order absolute.

[23] The 2nd Garnishee attempted to claim that the monies have since been withdrawn from the account. As stated by the Appellant's Counsel, this claim is not properly made out as the purported bank statement attached to the affidavit in reply is selectively made and appears questionable. I have found as such because the Appellant had elaborately shown in his affidavit in support the genesis of the funds that were being traced. If the 2nd Garnishee was genuine, they would have brought a full bank statement to disprove the Appellant's claim. But to bring a statement of between 30th July and 5th August 2022 in lieu of the period between December 2021 (when the money is said to have been deposited) and July 2022, is to say the least greatly subjective and partial. I am therefore not prepared to believe the 2nd Garnishee's claim that the monies have since been withdrawn.

[24] In all, therefore, the Appellant has satisfied the Court that the garnishee order nisi was wrongly vacated by the Learned Assistant Registrar and that she wrongly declined to make the garnishee order nisi absolute. I therefore allow to and I accordingly set aside the decision and order of the Learned Assistant

Registrar and replace it with an order making the garnishee order nisi issued on 13th July 2022 absolute. The 1st and 2nd Garnishees are ordered to comply with the garnishee order absolute for payment of the sum of UGX 75,245,000/= with the costs of the execution process. This appeal is accordingly allowed with costs.

It is so ordered.

Dated, signed and delivered by email this 2nd day of September 2022.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala
JUDGE