

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISCELLANEOUS APPLICATION No. 002 OF 2022**  
**Arising Out of HCT-01-FD-DC-No. 001 of 2018**

**1. MUZINDUKI PATRICK**

**2. MUGISA JOSHUA ::::::::::::::::::::::::::::::: APPLICANTS/OBJECTORS**

**VERSUS**

**KARUNGI GRACE TUMUSIIME:::::::::::::1<sup>ST</sup> RESPONDENT/JUDGMENT CREDITOR**

**TUMUSIIME CHRISTOPHER :::::::::::::::2<sup>ND</sup> RESPONDENT/JUDGMENT DEBTOR**

**BEFORE: HON JUSTICE VINCENT EMMY MUGABO**

**RULING**

**Introduction**

This is an objector application brought under Section 64(e) and 98 of the Civil Procedure Act, Order 22 rules 55, 57 and Order 52 rule 1 of the Civil Procedure Rules to release the following properties from attachment;

- a. Property comprised in Kisenyi Nyantungo Road Kyenjojo Town Council comprised of 4 commercial rooms and 12 residential rental rooms belonging to the 1<sup>st</sup> applicant
- b. Property on Ntooma Road, Kyenjojo Town Council with a commercial building comprised of 9 semidetached units currently occupied by the 2<sup>nd</sup> applicant.

The applicants also pray for a declaration that the said properties are

not available for attachment and for costs of the application.

In their respective affidavits in support, the applicants depose that the above properties belong to them and they are in occupation of the same and therefore are not available for attachment by the respondents.

The 1<sup>st</sup> respondent filed an affidavit in reply and states inter alia that the allegations advanced by the applicants are intended to deprive the 2<sup>nd</sup> respondent of the interest in the said properties yet the same now belong to the 2<sup>nd</sup> respondent. Further that the two properties are now being held by the applicants on account of and in trust for the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent further deposes that the present application is premature and misconceived as she has not applied for attachment of any of the properties mentioned and none has actually been attached.

The 2<sup>nd</sup> respondent did not file a response to the application.

## **Background**

The 1<sup>st</sup> respondent is a judgment debtor in Divorce Cause No. 001 of 2018 against the 2<sup>nd</sup> respondent. During the court distribution of the property in the said divorce cause, the two subject properties were among those decreed to the 2<sup>nd</sup> respondent as his share in the matrimonial property. The 1<sup>st</sup> respondent proceeded to recover all the properties that had been decreed to her in the divorce cause against the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent has neither applied for execution nor issued any notices to the applicants in respect to the subject properties.

## **Representation and hearing**

The applicants are represented by m/s Emoru & Co. Advocates and the 1<sup>st</sup> respondent by M/s Kayonga, Musinguzi & Co. Advocates. On the direction of this court, the hearing proceeded by way of written submissions. Counsel for the applicants and counsel for the 1<sup>st</sup> respondent have filed submissions which have been considered in this ruling.

### **Consideration by court**

Before I consider the merits of this application, I will first determine whether this application is proper and competent before this court.

The Applicants brought this application under **Order 22 Rules 55, and 57** and **Order 52 Rules 1, 2 & 3** of the Civil Procedure Rules, **Section 98 of the Civil Procedure Act** and Section 33 of the Judicature Act. Order 22 rules 55, 56 & 57 Civil Procedure Rules provide the procedure and rules relating to objector proceedings. **Rule 55 provides that;**

*“Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that the property is not liable to the attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he or she was a party to the suit; except that no such investigation shall be made where the court considers that the claim or objection was designedly delayed.”*

**Rule 57 provides that,**

*“where upon the investigation under rule 55 the court is satisfied*

*that for the reason stated in the claim or objection the property was not, when attached, in the possession of the judgment debtor or of some person in trust for him or her, or in the occupancy of a tenant or other person paying rent to him or her, or that, being in the possession of the judgment debtor at that time, it was so in his or her possession not on his or her own account or as his or her own property, but on account of or in trust for some other person, or partly on his or her own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.”*

The Applicants’ prayer is that the two subject pieces of land be released from attachment unconditionally and or should not be attached. I have carefully perused the record and the Applicants have not presented any evidence to show that the suit land has been attached in execution of any decree. There is no application for the execution of the decree in the divorce cause and the 2<sup>nd</sup> respondent has not taken any steps to take the applicants out of the occupation of the said properties.

I have not found an order of the court for the warrant to give vacant possession in execution of the decree in the divorce cause. This means that the subject properties have not been subject to any order of execution and certainly not attachment.

The purpose of objector proceedings is to prevent property from being attached if that property is at the date of attachment not in the judgment debtor’s possession or if the judgment debtor is holding it in trust for another. An application for objector proceedings therefore acts as a bar to a warrant of attachment. The Applicants’ prayer is for release from

attachment which in the circumstances of this case is unmaintainable and inconceivable since there has not been any warrant of attachment issued by the court.

I am alive to the fact that during the determination of Miscellaneous Application No. 42 of 2021 filed by the applicants for review of the judgment in the divorce cause against the respondents, this court advised that the applicants could bring objection proceedings against the execution of the decree in the divorce cause or file a fresh suit. However I note that an application for release from attachment may not be filed before the attachment from which they are sought to be released can commence. In the present case there is not even an application for execution in respect to the subject properties. This application would have been proper if the subject properties had been attached by any of the respondents.

In addition, from careful examination of the pleadings of the parties to this application, there appears allegations of fraud with respect to how the applicants and the respondents claim to have acquired the subject properties. An allegation of this nature can best be handled in an ordinary suit interparties which the applicants may be at liberty to file with proper legal guidance in order to fully settle their claims of ownership of the subject properties with the respondents. In ***Nakabugo v. Serungogi (1981) HCB 58***, court noted that it is trite law that when disputed facts are complex and involve a considerable amount of oral evidence, an originating summons or motion is not the proper procedure to take.

I therefore find that the order sought for release from attachment

cannot be maintained and this application is premature and speculative to that extent. It is hereby dismissed with no order as to costs.

I so order

Date at Fort Portal this 28<sup>th</sup> day of October 2022.



**Vincent Emmy Mugabo**

**Judge**

The Assistant Registrar will deliver the ruling to the parties



**Vincent Emmy Mugabo**

**Judge**

28<sup>th</sup> of October 2022.