

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(EXECUTION DIVISION)

MISCELLANEOUS APPLICATION No. 1701 OF 2014
(Arising from EMA No. 433 of 2013; which arose from H.C. (Comm. Div.) C.S. No. 433 of 2012)

NDAWULA RONALD..... APPLICANT/JUDGMENT DEBTOR

VERSUS

UGAFIN LIMITED..... RESPONDENT/JUDGMENT CREDITOR

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The Applicant, in this application, has moved this Court seeking a review of the orders of the Registrar Execution in the execution of the consent decree issued by the trial Court in the head suit herein. The brief facts are that the parties hereto had settled the head suit by consent on terms providing for the installment payment of the decretal amount, by the Judgment Debtor (Applicant herein). The Judgment Debtor however defaulted without satisfying even one installment; upon which the Judgment Creditor moved Court to proceed with execution. Pursuant to this, the Registrar Execution ordered for the attachment of properties comprised in Block 652 Plot 634 at Bulemezi Luwero (the suit property herein); and this was done, followed by a valuation of the same ready for sale under execution.

It is this attachment, which the Applicant is aggrieved with; hence this application founded on the following grounds, namely that: –

1. The suit property was not the subject of the mortgage in the head suit, and for which the consent order provided for foreclosure and sale under execution; hence, the attachment of the suit property in execution of the consent order was unlawful.
2. The property attached in execution was grossly and intentionally under valued for sale; hence, if Court upholds the order of attachment of the suit property, then it should order for a fresh and just valuation.

3. The suit property is not available for attachment since it is the subject of another suit pending before another Court; and for which a temporary injunction has been issued preserving the status quo.

4. The schools in physical possession of the suit property are neither parties to the head suit, nor to the execution proceedings arising there from.

The affidavit sworn by the Applicant himself, in support of the application, amplifies on the matters stated in the grounds of application in detail. Attached to the affidavit is an agreement, by which the Applicant had secured a loan from the Respondent. At paragraph 4 of the agreement, he had provided specific properties as collaterals for the loan; to wit: Plot 835 Bulemezi Block 652, and Plot 836 Bulemezi Block 652, both situated at Kavule. More important to note is that paragraph 5 of the agreement empowered the Respondent to lodge caveats or mortgages against or over any land, property, chattel, or asset provided by the Applicant as security for repayment of the loan. It is this provision, which the Applicant relies on to contest the attachment of the suit property in execution.

It seems to me that this application can be disposed of on one ground only; without having to bother with the other grounds raised herein. The parties amicably reached settlement of the head suit by a consent order, which spelt out the rights of the Respondent and duties of the Applicant to the Respondent. The part of the consent order, relevant to this application, is paragraph 3; which provided as follows: –

*"3. That in case of default on any of the above terms, all the total
sums still unpaid shall be payable. The mortgage shall stand
foreclosed and execution shall issue without any further notice."*

It was pursuant to the Applicant's failure to honour his obligation under the consent order that the provision of paragraph 3 of the settlement order came into play; and the execution, now contested, was set into motion. The Applicant had filed the suit in Court relying on the loan agreement between him and the Respondent. The settlement order, reached by the parties, was couched in language, which spelt out that execution would follow foreclosure of the mortgage. This means the Respondent's right of execution was restricted to those specific securities named in paragraph 4 of the mortgage agreement. In the light of the clear provision of the loan agreement, it could not be construed otherwise.

It was incumbent on the Registrar Execution to appreciate the letter and spirit of the order sought to be executed; and to issue the execution warrant pursuant to the order. If the Registrar found difficulty in making out the import of the order, he should have either sought clarification from the Court that issued the order, or referred the matter to a judge in the Execution Division for guidance. The collaterals provided by the Applicant to secure the loan did not include the suit property; hence, the foreclosure, which the consent order provided for to precede the execution in satisfaction of the consent order, did not include the suit property. Therefore, in the circumstance of this case, the suit property was not liable for attachment; and accordingly, the order by the Registrar Execution attaching it, purportedly pursuant to the consent order, was wrong.

To my mind, attachment of the suit property could only be justified pursuant to a separate order of Court; upon proof by the Respondent that the collaterals provided in the loan agreement have not satisfied the consent order. The Court would then order for fresh execution, covering properties outside of those specified in the loan agreement. Accordingly, on this ground alone, I find that the execution complained of was unlawful; and therefore do set aside, and order for the release of the suit property forthwith from execution. This is not an order for the discharge of the Applicant from his obligation under the consent order. The Respondent may pursue the execution of the consent order in accordance with the strict provision therein.

Before taking leave of this application, I must pronounce myself on an important matter of procedure with regard to attachment, in execution, of immovable property. O. 22 r. 51 of the Civil Procedure Rules makes an imperative provision, which I consider necessary to reproduce in extenso as follows: –

"51 (1) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from the transfer or charge and ordering the judgment debtor to deliver up to the Court the duplicate certificate of title to the property.

(2) A copy of the order shall be served by affixing it on a conspicuous part of the property or be served on the judgment debtor and further advertised as the Court may direct; except that the Court may further direct that, if an order cannot be served as aforesaid, it shall be served by affixing a copy of it on some conspicuous place in the Court and also on some conspicuous part of the house, if any, in which the judgment debtor is known to have last resided

or carried on business or personally worked for gain or in such other manner as the Court thinks fit."

In the light of the very unmistakably clear and mandatory provision of the rules set out above for attachment of immovable property in execution, the advertisement of the suit property for sale after attachment, with disregard to the elaborate procedure set out in the rule, such as first securing the certificate of title thereto, and publishing the attachment, was wrong. The Registrar Execution must meticulously adhere to this requirement whenever the property sought to be attached, in execution, is land. Similarly, an execution warrant must unmistakably specify the item, or property, intended to be attached, to avoid a situation where the Court bailiff may be tempted to go on rampage and attach any property deemed to belong to the judgment debtor. In the event, I make the following orders: –

- (i) The order by the Registrar Execution, by which the suit property (Block 652 Plot 634 at Bulemezi Luwero) was attached, purportedly in execution of the consent order in the head suit here in, is hereby set aside; and the suit property is hereby released from attachment.
- (ii) Costs of this application is awarded to the Applicant.



Alfonse Chigamoy Owiny – Dollo
JUDGE

11 – 09 – 2015