THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(EXECUTION DIVISION)

MISCELLEANOUS APPLICATION NO. 15651 OF 2014

(ARSING FROM CIVIL SUIT NO. 679 OF 2006 AND EMA 0449 OF 2014)

SSEBUDDE ALBERT ……..DEFENDANT/JUDGMENT CREDITOR/ APPELLANT

VERSUS

ALEX MATSIKO …… COURT BAILIFF / RESPONDENT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This appeal /application was made under S.98 C.P.A and Rules 2 (2) of the Judicature Act (Court Bailiffs Rules).

It seeks the orders of this court setting aside the award of Shs. 8,000,000/- granted as the court bailiff's instruction fees in this matter.

Costs of the application were also applied for.

The grounds for the application are that:-

1) The awards was erroneously made basing on a misdirection of the law by the Taxing Master.

2) The award is manifestly excessive and it is in the interests of justice that the appeal be allowed.

The Appeal is supported by the affidavit of the Appellant.

There is an affidavit in reply deponed by the Respondent insisting that the figure complained of was awarded in accordance with the law as the job was done and the property handed over was over and above Shs. 270,000,000/- and the nature of the work involved was complex. And that the amount given as costs was fair and reasonable and not excessive.

Further that, the appeal was only intended to delay the process of law but had no merits.

On 09.07.14 when the appeal was first called for hearing, court directed both Counsel to file written submissions setting down timelines and indicating that the ruling would be given on notice.

The Appellant's submissions were filed on 16.07.14 and Respondent's reply on 18.07.14 but no action was taken until 25.01.16 when file was reallocated to me.

The matter was called on 20.04.16 when parties demanded for judgment and were informed that the matter was just being called before me for the first time as the Judge who directed submissions to be filed had been promoted to a higher court before judgment was written.

On going through the Appellant's submissions, I found that Counsel went through the background of the case that caluminated into the Bailiff being given a warrant to give vacant possession.

The Bailiff received an advance of Shs. 500,000/- from the Appellant for the exercise, cleared the warrant with police and the RDC. But before he could evict the occupants of the property, he was stopped by court.

Counsel submitted that when execution is stopped by court, the party that applied for execution meets the costs of execution. That is why the Bailiff filed the Bill of Costs for taxation. He sought 3% professional fees upon instructions to give vacant possession in item 1 of property worth Sh. 270,000,000/-; relying on S. 1 (2) of the second schedule of the Judicature Act (Court Bailiffs) rules- which provides for fees for attachment of **moveable** under Sub S. (b) when the amount exceeds Shs. 120,000/- to include keeping possession for fifteen days 3% of the amount of the decree.

It is Counsel's argument that the 3% in the said schedule is only applicable to **moveable property** and not immovable property. And the Taxing Master accordingly erred to apply it to immovable property in a clear misinterpretation of the said regulation.

He prayed the appeal to be allowed with costs.

In reply, the Respondent submitted that the Taxing Master relied upon SI 13 -16 2nd Schedule and also took judicial notice of other bills taxed by court and allowed at either 6% or 3%.

He contended that the Taxing Master rightly applied the taxation principles and the appeal cannot stand because:-

1) While the application indicates Appellant and Respondent respectively, the Title refers to a Miscellenous Application and therefore it is difficult to know if it is an appeal or application.

Civil suit 679/2006 and EMMA 0449/2014 between Samuel Luwero and Another vs. Housing Finance Bank Ltd and the Applicant / Appellant – The Bill of Costs emanates from civil suit 679/2006 and EMA 0449/2014, yet the current application is between Appellant and Bailiff. By removing the parties to the suit, the Appellant amended the pleadings.

Yet the Applicant did not follow the procedure to amend pleadings under 0.6 r 19 C.P.R. – The case of **Adonia vs. Mutekanga [1970] EA 429** – was cited for the holding that ***"courts inherent jurisdiction cannot be invoked where there is an express provision of law which is applicable".***

The Appellant / Applicant ought to have sought leave of court to amend the pleadings and therefore the appeal ought to be dismissed.

Further that, the application is improperly before court and the Appellant / Applicant served the summons before they were signed or sealed by any officer of court. And therefore, Counsel argued, the summons were never filed and the appeal ought not to have been entertained.

He prayed for its dismissal with costs to the Respondent.

Court notes that in objecting to the summons, Counsel for the Respondent did not make any reply to the substance of the appeal / application before court.

In determining this appeal, court will deal with the objections raised by the Bailiff first.

And I wish to state from the outset that the preliminary objections are frivolous and vexatious. The Respondent agrees that the Bill of Costs which is between him and the Appellant arises from civil suit 679/2006 and EMA 0449/2014. The Bill of Costs being contested is between him and the Appellant and there was therefore no need to indicate the parties to the suit. Not indicating the parties to the suit from which the current application arises does not amount to amendment of proceedings.

0.6 r 19 C.P.R was not applicable to the circumstances of the present case.

There was no need for Appellant to seek leave of court to amend as there was no amendment to begin with. It was sufficient for him to indicate the suit and application from which the present appeal emanates without indicating the parties there to.

Court also finds that the application is properly before court as it clearly indicates that the requisite fees were paid and acknowledged by court. The application would only not have been filed if fees had not been paid.

The application on court record was duly signed by the Registrar on 19.06.14.

While the court record of 06.02.15 indicates that the summons were never signed or sealed, the trial judge then directed that they be signed and the file placed back before him.

If the application was served without signature then that did not adversely affect the Respondent in any way as he made a reply to the application and was given a chance to be heard when he was required to file submissions.

Courts have repeatedly held that ***"substantive justice should be exercised without any undue regard to technicalities".***

The objections are overruled for all those reasons.

This brings me to the issue **whether the taxing master properly applied the taxing rules to the matter before court**.

The Bailiff / Respondent was given warrant to give vacant possession. The property in issue was valued at Shs. 270,000,000/-.

The Taxing Master allowed an instruction fee claimed at 3% of the value of the property. The execution that is (vacant possession) was stayed before it was effected.

Looking at Schedule 2 of the Bailiffs Scale of fees – attachment of immoveable property where decree exceeds Shs. 120,000/- is given at Shs. 30,000/-.

And where there is postponement of sale (vacant possession) where amount exceeds Shs. 120,000/- - Bailiff is entitled to Shs. 12,000/-.

This court therefore finds that the most the Bailiff was entitled to was Shs. 42,000/- in the circumstances also bearing in mind that he had already been paid Shs. 500,000/- for the work and all the other expenses claimed were not contested.

The 3% applied by the taxing master was done in error as it clearly applies to attachment of **movable** property when the amount of the decree exceeds Shs. 120,000/- and it includes keeping possession for fifteen days.

In the present case, the property was immoveable property therefore the percentage did not apply.

The figure of Shs. 8,000,000/- granted by the taxing master is accordingly set aside and should be offset from the final figure allowed by court.

The amount due to the respondent is reduced to Shs. 260,000/- considering that he was paid Shs. 500,000/- to enable him do the work totaling Shs. 760,000/-.

Flavia Senoga Anglin
Judge
24.05.16