

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(EXECUTION AND BAILIFFS DIVISION)**

5 **MISCELLEANOUS APPLICATION NO. 1512 OF 2015**

**(ARISING FROM EMA 1511 OF 2015)  
(ARISING FROM CIVIL SUIT 933 OF 1993)**

10

**MBABAZI JAMES ..... APPLICANT**

**VERSUS**

15 **1. MATCO STORES**

**2. ABDUL YUSUFU ..... RESPONDENTS**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

20

**RULING**

This was an application made under 0.22 r 52 and 0.52 rr 1 and 2 C.P.R, seeking the release from attachment of the land comprised in LRV 1377 Folio 14, Plot 13, land at Masheruka, Sheema District.

25

Costs of the application were also applied for.

The grounds for the application were set out in the motion which was supported by the affidavit of the Applicant.

30

There is no affidavit in reply.

On 24.05.16 when the application was called for hearing, two Counsel appeared for the Applicant. The Applicant was absent and so were the Respondents and their Counsel.

5 Counsel for the Applicants submitted that the Respondents had been served by way of substituted service as per the Daily Monitor Newspaper of 10.05.16. – A copy of the Newspaper is on record.

10 There is also an affidavit of service on record confirming service by way of the advert in the newspaper, Counsel added and applied to proceed exparte.  
Court accordingly allowed hearing to proceed exparte.

15 Counsel then went through the motion and the provisions of the law under which it was made. He emphasized that the Applicant is the registered owner of the land in issue.

The land was attached and it was to be sold in satisfaction of the decree in civil suit 933/93.

20 However that, the decree was satisfied after sale of the rest of the Applicant's properties that were also attached.

To date, Counsel contended, the land has never been sold but has remained under attachment.

25 He prayed court to allow the application under the terms sought. He also went through the supporting affidavit, emphasizing paragraphs 2, 3, 4, 5, 6, 7 and 8 and referred to the return of the warrant and a sale agreement- which he asserts indicate that all the money due to the Respondents was paid.

30 Further that the Bailiff had instructions to sell the properties indicated in the warrant of attachment and sale which was done and even the balance was paid off.

Since 2000, Counsel added, there has been no further action taken: yet the property sought to be released is not part of the property indicated in the sale agreement.

The Judgment Debtor is in possession of the Certificate of Title for the suit land and it is therefore unfair to keep the property under attachment for ever without any further action by the Judgment Creditor.

5 The encumbrance was registered on the Title by the Bailiff using the Warrant of Attachment.

Since there is no affidavit in reply, Counsel asserted, the evidence of the Applicant is un rebutted, and since it has been fifteen years since attachment and yet execution has to be done within twelve years under S.28 CPA, Counsel prayed court to grant the application in the terms sought.

10

Under 0.22 r 52 (a) C.P.R, where (a) the amount decreed with costs and all charges and expenses resulting from attachment of any property are paid in court, or satisfaction of the decree is otherwise made through the court or certified by the court, or (b) the decree is set aside or reverse, the attachment shall be deemed to be withdrawn and in the case of immoveable property the withdrawal shall, if the judgment debtor so desires, be **proclaimed** as his / her expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 51 of this order.

15

The assertion that the decree and all expenses in civil suit 933/1993 were satisfied has not been rebutted since there is no affidavit in reply. And the documents, for example sale agreement produced for the Applicant indicate that all sums that were due and owing were paid including the balance, when certain other properties were sold. However, the encumbrance upon which the decree was registered on the title in issue in the present application has never been removed from the title.

20

25 Since under 0.23 r 52 C.PR, it is deemed that the attachment was withdrawn for all the reasons already outlined herein, it follows that the encumbrance ought to be removed. It therefore accordingly ordered that the encumbrance registered by the Bailiff on the title in civil suit 933/93 should be removed.

30 The application is allowed. The Applicant to meet his own costs of the application.

**Flavia Senoga Anglin**

**Judge**

**25.05.16**