

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

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**APPEAL NO. 007 OF 2016**

**(ARISING FROM MISC. APPLICATION NO. 745 OF 2016)**

**(ARISING FROM EMA NO. 744 OF 2016)**

**(ARISING FROM MISC. APPLICATION NO. 474 OF 2014)**

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**(ARISING FROM MISC. APPLICATION NO. 473 OF 2014)**

**(ARISING FROM MISC. APPLICATION NO. 145 OF 2014)**

**KABALE UNIVERSITY ..... APPELLANT**

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**VERSUS**

**1. HENRY RWAGANIKA**

**2. YOSAMU BAGUMA .....RESPONDENTS**

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**AND**

**1. KABALE UNIVERSITY**

**2. BOARD OF TRUSTEES OF KABALE UNIVERSITY**

**3. PROF. G.W. KANYEIHAMBA ..... RESPONDENTS**

25

**AND**

**STANBIC BANK (U) LTD (KABALE BRANCH)..... GARNISHEE**

**EQUITY BANK (KABALE BRANCH)..... GARNISHEE**

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**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

35 This appeal was made under the provisions of law cited in the motion seeking to set aside interalia the orders of the Registrar made on 14.06.16 following the preliminary objection raised by the Respondents. There are eight other orders sought.

40 When the appeal was called for hearing on 27.06.16, court was informed that all proposals made to the Respondents urging them to maintain the status quo had not been accepted, all the parties had failed to agree and that the hearing should therefore proceed.

However, Counsel for the Respondents submitted that where there are two matters in court over the same subject matter and one of them is in respect of contempt of court, the one of contempt takes precedence over other matters. The case of **Housing Finance Bank Ltd & Another vs. Edward Musisi CA. 158/2010**, relied upon in the case of **Adkhan vs. Stanbic Bank (U) Ltd**  
5 **Miscellaneous Application 1027/2015** was cited in support.

Counsel asserted that matters of contempt of court take precedence over other matters and therefore the application for contempt of court before this court ought to be determined first and thereafter, the appeal can proceed.

10 In response, Counsel for the Appellant referred to the provisions of the law under which the Appeal was made. He argued that the Constitution and the Judicature Act give court powers to enable court make the ends of justice meet

15 That S.34 CPA enjoins court to avoid a multiplicity of proceedings by handling only matters to do with execution and all questions relating thereto just like the appeal before court. Even if third parties are involved, the Supreme Court has already ruled on the matter in the case of **Simba K Ltd and Others vs. Uganda Broadcasting Corporation CA. 03/14**. S.34 CPA was considered in the case.

20 Counsel further contended that the appeal was filed on 15.06.16 whereas the application for contempt of court was filed on 22.06.16 and therefore the Appeal should take precedence over the application.

25 The procedure followed by the Appellant was followed by Justice Ntende in **Misc. Application No. 0509/2006**, from **HCCS 0389/06 – Kampala International University vs. Steel Rolling Ltd vs. Uganda Revenue Authority, Attorney General** where the issue was **whether the right money was being garnisheed**. The Third Party the Attorney General was summoned and the matter was placed before the Judge to hear the third party claim before the money was taken.

30 It was argued that the amounts claimed in the present case are also being challenged and since execution is not yet complete, Court should exercise its discretion to entertain the appeal. It was prayed that the objection be overruled.

35 Counsel for the Garnishee Bank associated himself with the submissions of Counsel for the Appellant, adding that in the case of **Housing Finance Bank and Another vs. Edward Musisi (Supra)**, the Bank was applying in the Court of Appeal for a temporary injunction but had not satisfied the condition in the interim remedy granted by the Registrar and hence the dismissal of the application on the ground that disobedience of the Registrar's orders amounted to contempt  
40 of court orders.

That the case is not applicable to the two competing applications before court presently.

It was pointed out that the application for alleged contempt was before the Registrar, but the appeal was filed first and the hierarchy demands that it be heard first.

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Further that, if the matter is heard on merit, court will consider as to why the garnishee did not appear in court.

That under 0.23 rr 1 (1) and 4 C.P.R, a garnishee has to furnish explanation as to whether the debt is disputed or not, which is being done.

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While under 0.23 r (4) - trial of liability of garnishee, Court is required to establish if there is a debt, instead of ex parte matters that do not touch the justice of the case.

Counsel for the Second Garnishee agreed with the submissions of both Counsel, emphasizing that the matter to be determined on appeal will substantially affect the application for contempt of court before the Registrar.

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And that since parties are before a higher court with jurisdiction to entertain the matter before it, there was nothing to stop it from hearing the appeal.

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It was prayed that the objection be overruled with costs, contending that the application for contempt had to proceed before the Registrar and not before this court.

The case of **Ayebazibwe Raymond vs. Barclays Bank- Justice Bench Book 2014-** where it was stated that ***“court should enforce its own orders”*** was relied upon.

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In rejoinder, Counsel for the Respondent urged court to follow the decision of the Court of Appeal in respect of S.34 C.P.A. Where it was ruled that ***“court orders should be upheld.”***

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Further that third party appearance in garnishee proceedings under 0.23 r 5 C.P.R is very clear, it is the garnishee upon whom the order nisi is served to bring it to the attention of court at the garnishee hearing, before the order is made absolute of any third party interests involved.

Once brought to court’s attention by the garnishee, court will order third party to explain the nature and particulars of interest. But that is not what happened in the present case, Counsel argued.

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Relying on 0.23 r 1 (1) CP.R, Counsel stated that any Judgment Debtor cannot claim to be a third party.

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Commenting about the case of **Kampala International University vs. Steel Rolling Mills (Supra)**, where rule 23 C.P.R was applied, it was argued that the Attorney General appeared in response to the order of court as Counsel for the Judgment Debtor and there were no third party proceedings.

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About the hierarchy of courts, Counsel argued that, the application for contempt has been filed before this court for hearing and therefore the hierarchy does not arise. He maintained earlier submissions.

10 Court directed the parties to maintain the status quo until the ruling was delivered on 04.07.16.

It is regrettable that the ruling has delayed due to circumstances beyond the control of court.

15 The issue is **whether the appeal should be heard before the application for contempt of court orders.**

After hearing the submissions of all Counsel, this court agrees that there are two matters before court over the same subject matter. One is an appeal that is challenging the amounts of money decreed to the Respondents. And the other is in respect of contempt of court orders, where it is claimed that the garnishee failed to remit the money decreed to the Respondents from the Appellants' account.

25 It is asserted for the Respondent that matters of contempt of court take precedence over other matters.

And indeed the principle established by decided cases is that ***“a party in contempt by disobeying an existing order cannot be heard in a different, but related cause of action, until such a person has purged himself/herself of that contempt.”*** – Refer to **Hankinson vs. Hankinson [1952] 2 AUER 579** interalia.

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The principle is meant to deter parties from contempt and to send a strong message that court orders should be obeyed and that there are consequences for disobedience of court orders. And courts have emphasized that ***“a court of law never acts in vain and as such, issues touching on contempt take precedence over any other case of invocation of the jurisdiction of court.”*** – See **Wildlife Lodges Ltd vs. County Council of Narok & Another [2005] EA 344 (HCK).**

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It would therefore seem that contempt proceedings take precedence over other matters, which in essence would mean that the contempt proceedings pending in the present case would have to be heard before the Appeal.

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However, I am inclined to believe that *“the guiding principles would depend on the individual circumstances and merit of each case. The individual circumstances of each case would determine whether the case falls within the scope and parameters of any other laid down principles”*.

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This is because while courts have emphasized the importance of compliance with court orders they have clearly stated that *“this is subject to the party’s right to challenge the order in issue.... It is the responsibility and duty of the party concerned in case that party for some genuine reason finds compliance with the court order not possible, to appropriately move court issuing the order and bring to the attention of the court the reasons for non-compliance”* – Refer to **Housing Finance Bank Ltd & Another vs. Edward Musisi Misc. Application 158/2010 CA.** which was relied upon in the case of **Mutambo Wepukhulu vs. Wasswa Balunywa and 2 Others Misc. Application 276/2012.**

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In such circumstances, it would be appropriate to hear the application bringing to the attention of court the reasons for non-compliance, before hearing the application in respect of contempt.

The Appeal in the present case would be rendered nugatory if the contempt proceedings were heard first, and has therefore to be heard before the contempt proceedings are disposed of.

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The fact that the garnishee upon whom the order nisi is served can bring to the notice of any court any third party interests involved before the garnishee order is made absolute does not deter **“any other party concerned”** from moving court to bring to its attention the reasons for non-compliance.

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The Garnishee Banks are just custodians of the accounts and the holder of the accounts to be attached, in this case Kabale University etal cannot be said not to be **“concerned parties”** when it is their interests at stake.

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If the Appeal is heard first, I am inclined to believe that it will resolve the issues in the application for contempt of court.

The Garnishee Banks can be added as Appellants (Applicants) to the matter, so that all issues arising out of the matter can be dealt with once and for all.

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Since the appeal was filed first before the contempt proceedings, it is only just and reasonable in the circumstances that it be heard first.

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The preliminary objection is accordingly overruled for all those reasons.

The application for contempt should be stayed pending the disposal of the Appeal, which ought to be fixed for hearing at the earliest opportunity.

Costs to abide the outcome of the Appeal

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**FLAVIA SENOGA ANGLIN**  
**JUDGE**  
**07.03.17**