

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(EXECUTIONS AND BAILIFFS DIVISION)  
MISCELLANEOUS APPLICATION NO 1379 OF 2016  
(ARISING FRON HC EMA NO 2228 OF 2014)**

**BUKENYA MOHAMMED}.....APPLICANT**

**VERSUS**

**BEMBA GERALD}.....RESPONDENT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicant is a purchaser of property of the judgment debtor and filed this application under Order 22 rules 82 and 89 (1) of the Civil Procedure Rules for the Respondent/judgment debtor to deliver up the property that is in his occupancy. It is for an order that the Respondent vacates the property and for costs of the application to be provided.

The grounds of the application are that the Applicant bought the Respondent's property through Messieurs Freight Auctioneers & Court Bailiffs on 5<sup>th</sup> July, 2015. The purchase price was also fully paid and the Respondent promised to vacate the premises within a short period. The Respondent is still in occupation of the premises and efforts to have him vacate the property have proved futile. Finally it is averred that it is in the interest of justice that the Respondent is ordered to deliver up the property.

The application is supported by the affidavit of Bukenya Mohammed in which he affirmed that on 5<sup>th</sup> July, 2015 he was sold land belonging to the Respondent by Freight Auctioneers & Court Bailiffs according to a copy of the sale agreement attached. The Respondent acknowledged receipt of the payment for the property and promised to vacate the premises. He has on several occasions reminded the Respondent to vacate the premises but to no avail. Finally he affirmed that the Respondent continued to occupy the premises well aware that the premises were sold.

On 30<sup>th</sup> August, 2017 the Applicant's Counsel Mugisha Akileo of Messrs Sociis Path Advocates appeared in court and was requested to file written submissions in support of the application. The Respondent was not represented.

In the written submissions counsel addressed the question of whether the Respondent should be ordered to vacate the Kibanja at Ganda Nansana measuring 50 x 100'. Secondly, counsel addressed the court on the issue of remedies available.

Counsel addressed the merits by giving the court the background to the application. The Respondent had been charged in **Criminal Case No. 1107 of 2013 Uganda versus Bemba Gerald** where he was convicted and sentenced to a fine of Uganda shillings 1,000,000/= or imprisonment for 12 months. He was also ordered to compensate the complainant in the sum of Uganda shillings 12,000,000/=. The Respondent served the custodial sentence but did not compensate the complainant hence the enforcement procedure for the compensation. Counsel relied on section 28 of the Civil Procedure Act for the provision that the Act relating to execution of decrees shall so far as applicable be deemed to apply to the execution of orders. According to counsel, it followed that the magistrate's orders were enforced in conformity with the spirit of the provision. A warrant of attachment was issued and there was due publication in the newspapers, evaluation of the property, approval of the valuation report and a consequent sale upon which returns were filed in court. The execution process was complete and was only pending delivery of the attached property to the highest bidder who is the Applicant. Counsel further addressed the court on the provisions of section 197 of the Magistrate's Court Act cap 16 laws of Uganda 2000 (the MCA). Subsequently, the Magistrate's Court also ordered compensation in accordance with sections 197 and 198 of the MCA. Counsel also relied on an Administrative Circular No. 4 of 2011 in which it was directed that all execution proceedings would be through the High Court.

I have carefully considered the record and the following are my findings relating to the warrant to give vacant possession of property. In this extraordinary proceedings, the Respondent was charged with the offence of theft contrary to section 254 (1) and 261 of the Penal Code Act and sentenced to serve a term of imprisonment of 12 months or a fine of 1 million Uganda shillings. He was also ordered to compensate the complainant in the sum of Uganda shillings 12,000,000/=. Judgment was entered on 2<sup>nd</sup> July, 2014. The proceedings were in the **Magistrates Grade 1 Court at LDC in Criminal Case No. 1407 of 2013 Uganda versus Bemba Gerald**. On 5<sup>th</sup> August, 2014 the complainant wrote to the Chief Magistrates Court at Mengo to forward the file to the Execution and Bailiffs division for enforcement of the decree for compensation. The file was received on the 3<sup>rd</sup> September, 2014 by the High Court criminal registry. Subsequent proceedings indicate that an application for execution was made on 15<sup>th</sup> September, 2014 by the complainant. By this time the judgment debtor was serving a prison sentence. There were proceedings in October 2014 and a production warrant was issued for the judgment debtor and on 28<sup>th</sup> October, 2014 the prayer for attachment of the property of the judgment debtor was granted. A valuation report indicated that the fair market value of the property is Uganda shillings 20,800,000/= while the forced sale value was put at Uganda shillings 8,500,000. The valuation surveyors are Real Capital Services Ltd. The valuation report is dated 24<sup>th</sup> November,

**Decision of Hon. Mr. Justice Christopher Madrama Izama \*~\*~ \*&\*\$\$\$# xtra+ maXimum735securityx 2017 style**

2014. An order for the sale of land is dated 7<sup>th</sup> July, 2015 by the Assistant Registrar Execution Division.

Subsequently upon the said sale, an application was made for vacant possession of the suit property.

I have consequently considered the sale agreement attached to the Applicant's application dated 21<sup>st</sup> July, 2015 between Messieurs Freight Auctioneers & Court Bailiffs in which the Applicant bought the property for Uganda shillings 9,000,000/= . Some other document indicates that the complainant one Angela Mwanguzi received a sum of Uganda shillings 9,000,000/= from Mr. Jacob Turyasiima of Freight Auctioneers.

I am not required to consider the merits of the sale because it was a sale under court order.

The law is that a purchaser who buys pursuant to execution of a decree acquires good title. Section 49 of the Civil Procedure Act protects a purchaser who buys land in the following words:

“Subject to the provisions of any law for the time being in force relating to the registration of titles to land, where immovable property is sold in execution of a decree such sale shall become absolute on the payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale”

Unless otherwise the property is acquired fraudulently the purchaser acquires good title. Section 50 of the Civil Procedure Act even bars a suit against the purchaser on the ground that the property was sold on behalf of the plaintiff. It provides as follows:

“50. Suit against purchaser not maintainable on the ground of purchase being on behalf of the plaintiff.

(1) No suit shall be maintained against any person claiming title under a purchase of immovable property sold under a decree of execution on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against the property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.”

It is very clear that no suit shall be maintained against a purchaser of immovable property sold under a decree of execution except under section 50 (2) of the Civil Procedure Act. A sale under a warrant of execution of the court is absolute. What is material is that the purchaser has paid the

**Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~ \*&\*\$\$\$# xtra+ maXimum735securityx 2017 style**

full purchase price. Under those circumstances the court cannot look into the adequacy of the consideration or the justification for the execution.

I am mindful of the dangers of a court order in a criminal proceeding being used in a questionable manner to oppress an accused person.

In **Curtis vs. Maloney [1951] 1 K.B. 736**, goods in possession of a judgment debtor were seized by the Sheriff and sold to a purchaser through the power of sale under section 15 of the Bankruptcy and Deeds Arrangement Act 1913 of Britain, which section provides:

“Where any goods in the possession of an execution debtor at the time of seizure... ETC (read page 737 of judgment.)”

Lord Denning at page 745 held that the provision was a statutory protection of bona fide purchasers. He held that the words in the section that “the purchaser of the goods shall acquire good title” should be given their full meaning. The proviso thereof does not whittle down the title of a bona fide purchaser. It does not deprive the original owner of the goods from suing any wrongdoer who had converted the goods. In the case of **Dyal Singh vs. Kenyan Insurance Ltd [1954] 1 All E.R 847 PC** Reid LJ held at page 849 that a bailiff or other officer of the court is only entitled to seize goods that belong to the execution debtor, but it is often difficult for him to ascertain the ownership of the goods in possession of the debtor and he may without negligence sometimes seize and sell goods which do not belong to the debtor. Furthermore, it would be difficult for a buyer in an auction to inquire about title. He held that the law imputing constructive notice does not imperil the right of a purchaser in an auction. Such a constructive notice could have been presumed on the bailiff who is protected. Therefore the right of action with regard to an action by an aggrieved person, aggrieved by the sale is so limited as not to extend to defeat the title of the purchaser.

Last but not least in **Goodlock vs. Cousins [1897] 1 Q.B. CA 558**, it was held by Lord Esher M.R. at pages 560 and Lopes L.J. at pages 561 that where the claimant had an opportunity of preventing a sale under the section by making a deposit with the bailiff but fails to do so and the goods are sold and proceeds paid into court, the purchaser acquires a good title to the goods.

The above principles demonstrate that a sale by court under a decree of the court leads to the acquisition of good title by the purchaser and the court is obliged to give the purchase vacant possession of the land in case where it is sale of immovable property.

In this case the order arises from a criminal proceeding in a magistrate’s court under the MCA which provides as follows:

“197. Order for compensation for material loss or personal injury.

(1) When any accused person is convicted by a magistrate’s court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.

(2) When any person is convicted of any offence under Chapters XXV to XXX, both inclusive, of the Penal Code Act, the power conferred by subsection (1) shall be deemed to include a power to award compensation to any bona fide purchaser of any property in relation to which the offence was committed for the loss of that property if the property is restored to the possession of the person entitled to it.

(3) Any order for compensation under this section shall be subject to appeal, and no payment of compensation shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the determination of the appeal.

(4) At the time of awarding any compensation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any sum paid or recovered as compensation under this section.”

I note that the order for compensation was made together with the judgment and sentence contrary to section 197 (3) of the MCA which requires the order for compensation to be made after the period for appealing the conviction and sentence has elapsed. That notwithstanding the court is not dealing with the merits of the compensation but the execution of the order which lead to a sale to a third party irrespective of the propriety of the order for compensation. The High Court is to implement the decree of a lower court as a court executing the decree and being a court of record; I must make some pertinent observations. The High Court also has unlimited original jurisdiction in all causes and matters as well as appellate jurisdiction in the criminal matter which arose from a Magistrate Grade 1 conviction and sentence. The order for compensation is a consequential order and of a civil nature where the evidence discloses a civil cause of action. Section 197 (1) of the MCA provides that where a witness or prosecutor has suffered material loss or personal injury in consequence of the offence committed and that “substantial compensation is, in the opinion of the court, recoverable by that person by *civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable*” (Emphasis added). The Order of compensation is an order made in the jurisdiction of the trial Magistrate which he could have made in a civil action brought before him or her.

In this case it is alleged that the accused who is the Respondent stole Uganda shillings 12,000,000/= shillings the property of one Muwanguzi Angela. The accused had met the complainant in South Sudan and one Harriet Namuddu (apparently on behalf of Muhanguzi Angela) gave him 18,000 Pounds equivalent to Uganda shillings 12,000,000/=.The long and short of it is that the accused failed to pay back hence the prosecution in Uganda. Where was the offence committed? Could the Magistrate Court Grade 1 try a civil action on the same facts? Was the accused charged pursuant to the sanction of the DPP? The charge sheet has the stamp of the Resident State Attorney LDC on 30<sup>th</sup> December 2013. Those are the only questions I may ask for the moment.

The above facts cannot be taken into account to impeach the title of the purchaser. I will however have the file sent to the Chief Registrar for appropriate action. My concern is that the process of the High Court should be used where jurisdiction has been exercised lawfully by the lower court.

In the meantime the purchaser's application for vacant possession cannot be denied. The Applicant's application is allowed in the following terms:

1. The Respondent shall deliver up the property sold to the Applicant/Purchaser.
2. The Respondent shall vacate the property within a period of 30 days from the date of this order.
3. The application succeeds with costs.

Ruling delivered on the 13<sup>th</sup> of September 2017

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

Tugumisirize Innocent for the Applicant

Mohammed Bemba the Applicant in court

Respondent is absent

Frank Namanya: Court Clerk

**Christopher Madrama Izama**

**Judge**

**Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~ \*&\*\$\$\$# xtra+ maximum735securityx 2017 style**

13<sup>th</sup> September 2017