

**IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
EXECUTIONS AND BAILIFFS DIVISION**

MC NO. 3139 OF 2018

JOSEPH LUBIRANGO..... APPLICANT/OBJECTOR

V

- 1. BUGYEGYERA ALLAN**
- 2. TUMUKUNDE NABOTH**
- 3. MUGISHA JOHN.....JUDGMENT CREDITORS (Representatives of former workers of Dairy Corporation)**

AND

- 4. SEMAKULA AUGUSTINE.....JUDGMENT DEBTOR.**

BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

1. By a notice of motion filed on December 21, 2018, the Applicant moved court under order 22 rule 55 for an order that the property comprised in LR 33477 Vol. 3927, Folio 3 Erisa Road, Kampala, be released from attachment. The Applicant relied on his own affidavit in support and documentary evidence. The Judgment Creditors/1st, 2nd and 3rd Respondents relied on affidavits in reply of 1st Respondent Bugyegyera and 4th Respondent Semakula for their respective defences.

Hearing process

2. When Parties appeared before me on February 25, 2020, I gave them a schedule to file written submissions. I have seen submissions of the Applicant filed on March 25, 2020. Regarding the Judgment Creditors, I have seen submissions filed way back July 4, 2019, long before I was posted here. Nevertheless, since the said submissions relate to MC NO. 3139 of 2018 with which I am now seized, I shall consider them as well as Applicant's submissions. Counsel for the judgment debtor did not appear on February 25, 2020 although the judgment debtor was present. As I write this decision, submissions on behalf of the judgment debtor are not on record.

Background

3. By the decision of the Disciplinary Committee of the Law Council dated October 26, 2016, between Dairy Corporation Ltd v Augustine Semakula, the Committee cleared Dairy corporation to recover the sum of 4,026,101, 621/ by attachment of Semakula's property identified as Kisugu Kyadondo Block 244 Plot 248 and leasehold register vol. 3927 plot 7, Erisa road Kampala. This decision followed another one delivered on June 10, 2016 that disallowed Semakula's application for stay of execution.
4. A warrant of attachment dated May 4, 2018 was issued by the chairperson of the Committee to Mureefu Moses against Semakula in respect of two properties. It is this attachment that is now being challenged by the Objector Lubirango.

The law

5. Order 22 rule 55 sets out the circumstances that must be evident before an Objector's challenge can be sustained. In other words, the Objector must adduce evidence to show that at the date of the attachment, he or she had an interest in the property attached.
- 10 Under order 22 rule 56, for the court to release property attached from attachment, it must be satisfied that at the time of the attachment, it was not in possession of the Judgment Debtor or of some person in trust for him or in possession of a tenant answerable to the Judgment Debtor; or it was in possession of the Judgment Debtor but held in trust for another person; or the Judgment Debtor was in possession partly on his behalf and partly on another's behalf.
- 11 In **David Muhenda & three others v Margret Kamuje SCCA No. 9 of 1999** which was cited in **High Court Civil Appeal No. 412 of 2011 Mary Nakato v Nanyonga Rose** by Musoke J as she then was, Her Lordship reiterated the key requirements in order 22 rules 55 and 56 that the Judgment Debtor should not be in possession or if in possession, it should be on behalf of some other person or partly on behalf of the Judgment Debtor and partly on behalf of another for property to be released from attachment.
- 12 Although the court has a duty to investigate the claim by the Objector that he or she has an interest in the property and to rule out the fact that the Judgment Debtor is in possession physically or constructively, the Muhenda case introduced yet another area of focus by the court, namely,

questions of legal right and title are not relevant except in so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment Debtor or some other person.

Preliminary issue

- 13 In their submissions filed way back on July 4, 2019, Counsel for the three Judgment Creditors submitted that this court has no jurisdiction to entertain the objection to execution which was taken out by the Disciplinary Committee of the Law Council under section 20(6) of the Advocates Act Cap. 267. I reproduce the section below:

The Disciplinary Committee may issue a warrant for the levy of the amount of any sum ordered by virtue of this section on the immovable or movable property of the Advocate by distress and sale under warrant and the warrant shall be enforced as if it were issued by the High Court.

- 14 Counsel for the Applicant submitted that Article 139(1) of the constitution confers on the High Court unlimited jurisdiction and therefore the Objector application is properly before the Execution Division.

- 15 The Supreme Court in **N.K Chowdry v. Uganda Electricity Board [2011] Civil Appeal No. 27 of 2010**, held that the words in a statute must first be given the ordinary meaning, therefore, as section 20 of the Advocates Act gives power to the Disciplinary Committee to execute its own orders in the same way orders are executed in the High Court, it follows that the procedure that obtains in the High court when warrants are challenged applies.

- 16 The Disciplinary Committee sits as an adjudicative body when it makes decisions against advocates under section 19 of the Advocates Act and is empowered by section 20 to enforce its decisions in the same way High Court decisions are enforced. Accordingly, an order is extracted after which execution follows.

- 17 I have read the decision of the Committee dated October 28, 2016 that disallowed an application for stay of execution and authorised execution to proceed. While magistrates' courts are empowered by the CPA under section 34 to hear Objector applications in their capacity as the courts that passed the decree, registrars' powers are conferred by subsidiary legislation. Hence, under order 50 rule 4, registrars have powers to execute High court orders and decrees but under order 50 rule 2, they do not have powers to hear contentious cases that include challenges to attachments and sale.

18 It follows that since section 20 of the Advocates Act mandates the Committee to execute its orders as if they were High Court orders, applications challenging attachment of property under order 22 rules 55 and 56 must be heard by the High Court as is the practice whenever registrars' orders are challenged. The preliminary objection raised by counsel for the Judgment Creditors is therefore overruled and I shall proceed to determine the Objector application.

The evidence

19 It was the Applicant's case that on March 20, 2015, he purchased property comprised in LR 33477 Vol. 3927 Folio 3 Erisa Road, Kampala from the Judgment Debtor at 400,000,000/ leaving a balance of 20,000,000/ upon handover of the title and signed transfer forms. Lubirango relied on a sale agreement that was not contested by the Judgment Debtor Semakula, but, worthy of note is the caveat lodged by Lubirango with the Commissioner Land Registration on March 12, 2018. Lubirango deposed in the affidavit in support of the caveat that Semakula had been evasive about delivering the certificate of title to him and the caveat was to prevent any person dealing in the land since it was registered in the names of Semakula. In his affidavit in reply to the Objector application, Semakula deposed that he had not signed the transfer forms because Lubirango had not paid him his balance of 20,000,000/.

20 The sum total of the evidence of these two is that while Lubirango affirms Semakula has evaded delivery of the title, Semakula asserts Lubirango has not paid his balance. This means the sale is incomplete and although Lubirango might be in possession, this per se is not an interest in law. In effect, Semakula is in constructive possession of the attached property because he still has the legal title to the land.

21 For purposes of this Objector application, mere possession by Lubirango the Objector, without legal title which is still with the Judgment Debtor is sufficient for me to find on a balance of probabilities, that the Objector has failed to satisfy me that he has an interest worthy of recognition by this court in the attached property.

22 Accordingly, the warrant of attachment issued on May 4, 2018 by the Disciplinary Committee is valid and execution of the order of the Committee shall continue unhindered. The application is accordingly dismissed with orders that the Committee continues with execution of its orders. The Applicant shall pay the Judgment Creditors Costs of this application assessed at 3,000,000/ (three million only).

DATED AT KAMPALA THIS 31ST DAY OF AUGUST 2020

HON. LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Semuyaba, Iga & Co. Advocates for the Applicant/Objector;
Ntambirweki Kandeeba & Co. Advocates for the 1st, 2nd and 3rd
Respondents/ Judgment Creditors
Nsubuga K.S Advocates for the Judgment Debtor