

IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
EXECUTION AND BAILIFFS DIVISION
MA NO. 204 NOF 2020
ARISING FROM EMA NO. 16 OF 2020
(ARISING FROM MENGO CHIEF MAGISTRATE'S COURT CIVIL SUIT NO. 758
OF 2019)

SHABAN SSALONGO KIBERU..... APPLICANT

V

- 1. MATONO BILALI KATO**
- 2. MWANJE PATRICK.....RESPONDENTS**

BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

1. The Applicant Kiberu moved court under order 22 rules 55, 56 and 57 of the Civil Procedure Rules for two substantive orders:
 - a. Execution of the order in EMA No. 16 of 2020 is stayed.
 - b. Isuzu motor vehicle No. UAY 742 W is released from attachment and sale orders issued on March 18, 2020.
2. The motion was supported by the affidavit in support of the Applicant Kiberu. Only the 1st Respondent Matono Bilal Kato filed an affidavit in reply opposing the motion.

Background facts

3. The 1st Respondent Matono was the plaintiff in Mengo Civil Suit No. 758 of 2019 wherein he sued Patrick Mwanje under summary procedure for recovery of a debt of 7,500,000/ and judgment was entered for this sum on November 27, 2019.
4. On January 15, 2020, Matono applied for execution of the decree against Mwanje by attachment of motor vehicle No.UAY 742 W which application was allowed when the assistant registrar issued a warrant of attachment on March 18, 2020 to Bailiff Donus Bwambale. The bailiff attached the vehicle and advertised it for sale.

This application

- 10 Before the assistant registrar could authorise the sale, Kiberu filed MA NO. 204 of 2020 to challenge the attachment on the grounds he had bought the vehicle UAY 742 W at 16,000,000/ from one Kawesi Charles by a sale agreement dated March 9, 2019 but which payment was completed on April 11, 2019.
- 11 From the affidavit in reply of Matono, it is evident Matono sold the vehicle to Mwanje on February 18, 2019 at 17,500,000/. He paid 10,000,000/ leaving a balance of 7,500,000/ but nevertheless, took possession. It is now clear that Mengo Civil Suit No. 758 of 2019 was to recover the 7,500,000/ from Mwanje.
- 12 The sale agreement between Mwanje and Kawesi suggests the sale took place on **February 12, 2019**, which is strange because Matono sold it to Mwanje on **February 18, 2019**.
- 13 It seems as soon as Mwanje got possession on February 18, 2019, he sold it to Kawesi who then sold it to **Kiberu on March 9, 2019**. The chain goes like this: Matono is registered as owner of the Isuzu; he sells to Mwanje leaving a balance of 7,500,000/ for which he sues to recover; Mwanje sells to Kawesi; Kawesi sells to Kiberu.
- 14 With three purchasers in between the time Matono ceded possession to Mwanje in February 2019(1st purchaser); then Kawesi (2nd purchaser) and lastly Kiberu (3rd purchaser), Matono cannot realistically claim a lien in a vehicle that has been out of his possession since February 18, 2019.
- 15 Furthermore, the decree in Civil Suit No. 758 of 2019 only gave judgment to recover a debt 7,500,000/. It did not give a judgment for Matono to exercise his alleged lien in the vehicle and his remedy is to identify other property against which execution can be carried out. The effect of this analysis is that since property in the vehicle had passed to the last purchaser Kiberu, the vehicle belongs to Kiberu regardless it was still registered in the names of Matono.
- 16 Counsel for Matono submitted that Kiberu ought to have filed an objector application and not an application for stay of attachment. Kiberu seeks orders to release the vehicle from attachment on grounds it belongs to him, therefore, this application is properly before me.

17 In summary, as property in the vehicle had passed to Kiberu, vehicle No. UAY 742 W could not be subject of attachment as it ceased to belong Mwanje against whom the execution was issued.

Costs

18 Rule 13 (4) of the **Court Bailiffs Rules 1987(S.I. 84 of 1987)** provide that where execution has been stayed for whatever reason, costs of the attachment are paid by the judgment creditor. In the premises, Matono as judgment creditor, shall pay the bailiff's costs.

19 The following orders will issue:

- a. Vehicle No. UAY 742 W is released from attachment into the hands of Kiberu, the Applicant.
- b. Matono will have to identify other property of Mwanje against which execution can issue.
- c. Each party shall bear their own costs of this application.
- d. The bailiff's costs of the attachment shall be paid by Matono.

DATED AT KAMPALA THIS 19TH DAY OF AUGUST 2020

HON. LADY JUSTICE HENRIETTA WOLAYO

LEGAL REPRESENTATION

Okurut, Okalebo & Co. Advocates for the 1st Respondent

Imperium Advocates for the Applicant