

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]**

**MISCELLANEOUS APPLICATION NO.0278 OF 2021
(ARISING FROM CIVIL SUIT NO. 0182 OF 2019)**

**FREDRICK NGANDA KAWEEESA:.....APPLICANT
VERSUS**

- 1. DAVANTI UNION LTD**
- 2. TONY KIPOI NSUBUGA:.....RESPONDENTS**

RULING

BEFORE: HON MR. JUSTICE HENRY 1. KAWESA

This is an application brought by notice of motion where the Applicant seeks orders that;

a) Property comprised in Kyagwe Block 107 plot 1016 Nakabago be released from execution/attachment and;

b) The warrant to give vacant possession be set aside.

The application is supported by an affidavit of Fredrick Nganda Kaweesa.

The reply to the application is contained. in the affidavit filed in reply by Joseph Kamusiime and further rejoinder affidavit was sworn by Frederick Nganda Kaweesa; the Applicant.

The Applicant filed submissions and the Respondents filed submissions in reply. The Applicant filed submissions in rejoinder.

I have gone through the pleadings and submissions. The main thrust of the Applicant's submissions is that the Applicant is a resident and in occupation of **land comprised in Kyaggwe Block 107 plot 1016 land at Nakabago, Mukono District.**

In his application and affidavit in support, the basis of this allegation is allegations contained in paragraphs; 1,2,3,5 - 20 of his affidavit in support.

The facts were rebutted by Mr. Joseph Musiime who avers that there is no ongoing execution, no execution order and no warrant of attachment that has been sought or obtained from Court and therefore, the application is incompetent, misconceived and bad in law and further details are in paragraphs 5 - 24 of the affidavit.

In rejoinder, F Kaweesa averred that the same is controverted.

Having considered the above averments and the law, I find that this application was filed under Section 33 of the Judicature Act, 98 of the Civil Procedure Rules, O.22 r55(1); 56 and 57; all which relate to issues of attachment.

O.22 r55 of the Civil Procedure Rules (1) refers to property attached in execution of a decree, so that the attachment is investigated.

O.22 r56 of the Civil Procedure Rules requires the claimant to adduce evidence to show that at the date of the attachment, he had interest in the attached property.

O.22 r57 of the Civil Procedure Rules refers to the release from the attachment after invoking rule 58 and after an investigation, Court is convinced with the objection.

Having looked at the matter before me, I agree with Counsel for the Respondent's arguments that the application is misconceived.

There is no execution, no attached property or warrant of execution issued in this matter. The application is therefore speculative and an abuse of Court process.

I do not find any merit in the application.

It is dismissed with costs to the 1st Respondent who participated in the same.

I so order

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Henry 1. Kaweesa

JUDGE.

06/04/2022

06/04/2022:

Andrew Wamina for the 1st Respondent.

Francis Obbo for the Applicant.

Parties absent.

Court:

Matter for Ruling.

Ruling delivered communicated to the parties above.

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Henry I. Kawesa

JUDGE

06/04/2022