

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

**(CORAM: ODOKI, C.J, TSEKOOKO, MULENGA,
KANYEIHAMBA, KATUREEBE, JJ.S.C.)**

CIVIL APPEAL NO. 10 OF 2005

BETWEEN

IMMELDA NASSANGA ::::::::::::::::::::::::::::::
APPELLANT

AND

STANBIC BANK }
BAMUGUZANGA FARM (U) L^TD } **:::::::::::::::::::: RESPONDENTS**

[An appeal arising from the judgment and decision of the Court of Appeal at Kampala, (Okello, Mpagi-Bahigeine, Byamugisha, J.J.A) dated 22nd July, 2005, in Civil Appeal No.119 of 2003].

JUDGMENT OF KANYEIHAMBA, J.S.C

This is a second appeal from the Court of Appeal which dismissed the appellant's appeal against the judgment and orders of the High Court (Tabaro, J) in Civil suit No. 76 of 1995.

The background and facts of this appeal may be summarized as follows:

The second respondent, M/s Bamunguzanga Farm Limited (the Farm) obtained a loan from the Uganda Commercial Bank Ltd (UCB), the predecessor of Stanbic Bank Ltd, the first Respondent on or about the 13 April, 1992. The loan was for the purposes of expanding the farm situated at Kyewanise, Singo, Busunju in the

District of Mubende. The loan was given to the second respondent in the form of materials, namely a tractor, a trailer together with other agricultural equipment. The terms and conditions of the loan were reduced into a loan agreement and signed by the parties. One of the terms contained in the written agreement was that both the tractor and the trailer would be registered in the names of and remain the property of the UCB and would be transferred to the company only when the loan was fully paid. Indeed, the tractor and trailer were registered in the names of the bank.

As a consideration for the supply of the tractor, trailer and other materials, it was agreed that the Farm would repay to the UCB the sum of Shs. 33,221,880 as the principal sum borrowed with interest thereon. The loan was repayable in 48 equal monthly instalments commencing after a twelve months grace period.

Prior to repayment of the loan, Christopher Iga, the Managing Director of the Farm was sued in HCCS NO.956/93 for a personal debt in sum of shs. 5,000,000 he owed to one Livingstone Mukasa. Thereafter, the decree - holder took out execution proceedings that resulted in the issue of a Warrant of Attachment and sale of tractor and trailer which were seized from the compound of Christopher Iga by Intercity Auctioneers to whom the warrant was addressed.

The warrant of attachment was addressed to one S.N. Kasirye of the Intercity Auctioneers of Kampala. At the time of issuing the attachment warrant, M/s. Bamunguzanga Farm Limited had not

yet completed paying the bank loan. The Intercity Auctioneers seized the tractor and trailer from the compound of Christopher Iga on or about 16.04.1994 and took it to Kampala.

On the discovery of the seizure of the tractor and trailer, the Chief Manager of the legal services of the Uganda Commercial Bank Ltd, wrote a letter to the Intercity Auctioneers protesting against the seizure and warning that the tractor and trailer were owned by, and registered in the names of the Uganda Commercial Bank and not liable for attachment. Meanwhile, the warrant of attachment expired. These events notwithstanding, the auctioneers went ahead and sold the tractor and trailer to Imelda Nassanga, the appellant. Nassanga paid for the tractor and trailer and took possession of both and registered them in her name as the new owner. Later, the Uganda Commercial Bank Limited had the tractor and trailer impounded by its agents, M/s Key Agents and Auctioneers and took them into its own custody and possession at its premises in Kampala.

The appellant who believed that she was the legal owner of both the tractor and trailer filed High Court CS No. 76 of 1995 for recovery of the tractor and trailer against UCB together with general damages and interest. Subsequently, UCB took out Third Party Proceedings to join the Farm to the suit,

In the High Court and with the consent of parties, the following issues were framed for determination by the learned trial judge:

1. *Whether the tractor and trailer were lawfully attached for sale.*
2. *Whether the tractor and trailer were sold at a public auction.*
3. *Whether the title to the tractor and trailer belong to the plaintiff or the Uganda Commercial Bank Ltd.*
4. *Which remedies if any, are the parties entitled to.*

After reviewing the facts and considering submissions of counsel and the relevant authorities, the learned trial judge dismissed the appellant's suit with costs to the first respondent and ordered the 2nd respondent, M/s Bamungazanga Farm Ltd to bear its own costs.

Dissatisfied with the judgment and orders of the High Court, the appellant appealed to the Court of Appeal which dismissed the appeal. Hence this appeal.

The appellant's Memorandum of Appeal to this Court contains three grounds framed as follows:

1. *That the Honourable Court of Appeal erred in law in holding that the sale and auction of the tractor and trailer was (sic) unlawful.*
2. *That the Honourable Court of Appeal erred in law in holding that it was within the powers of UCB Ltd to order the seizure of the tractor without instituting objector proceedings or a substantive suit.*

3. *That the Honourable Court of Appeal erred in law and fact in holding that the plaintiff was not a bona fide purchaser.*

This court heard the appeal on the 27th June, 2007. Mr. Kanyemibwa represented the first respondent while Mr. Kamugisha Byamugisha represented the second respondent. Mr. Meddi Lubega represented the appellant. Mr. Lubega argued the grounds in the order they appeared in the Memorandum of Appeal.

I will first consider submissions of Counsel and then dispose of the grounds of appeal. On ground 1, Mr. Lubega contended that while he would concede that the sale was an irregularity because of the expiry of the warrant of attachment, nevertheless this was an irregularity that did not go to the root of the sale by auction.

Counsel contended further that despite the irregularity, the 1st respondent had no right to seize the tractor and trailer from a third party who obtained lawful possession from a sale effected under a court order except if the 1st respondent had sued and obtained a court order for recovery of the same. Counsel contended further that the 1st respondent had no authority to take the law into its own hands by seizure of the tractor and trailer. Counsel for the appellant relied for his submissions on this ground on **Aloysius Tibamanya v. Januario Tibamanya** HCCS.15/94 at Mbarara, unreported, in which the learned trial judge, Karokora, J, as he then was, cited with approval the case

of **Iron and Steel Ware Ltd v. C.W. Marty and Co.** (1956) 23 EACA 175.

Counsel therefore submitted that the courts below were wrong to hold that the 1st respondent was justified to seize the tractor and trailer without first filing a suit in court which would authorize it to do so, if at all. Counsel cited Order 19 rule 71 which provides that *“no irregularity in conducting the sale of movable property shall vitiate the sale.”* He further submitted that the same rule goes further to provide that every person who suffers injury by the irregularity may institute a suit for compensation against the person responsible for the irregularity which the 1st respondent failed to do.

For the 1st respondent, Mr. Kanyemibwa opposed all the grounds of appeal. On ground 1, it was Kanyemibwa’s contention that no fault can be found in the findings, judgments and orders of the courts below. Counsel submitted that once it was shown that the tractor and trailer actually belonged to the registered owner, namely the Uganda Commercial Bank, the auctioneers could not obtain any legal instructions to sell the same except as authorized by the Uganda Commercial Bank. In the absence of such authority from the bank there could be no authority or sale by them. Counsel contended further that the argument that the property in the suit was sold under the lawful authority of a court warrant of attachment is misconceived since such a warrant cannot be issued to benefit a judgment creditor against the

property of an innocent third party who is not a debtor to the creditor.

Counsel for the 1st respondent contended further that in any event the warrant of attachment had expired by the time the auctioneers attempted to sell the two items in dispute under that same warrant. Mr. Kanyemibwa contended that there was no merit in this ground which should be dismissed.

For the 2nd respondent, Mr. Kamugisha Byamugisha essentially associated himself with the submissions and arguments advanced by Mr. Kanyemibwa, counsel for the 1st respondent. He further contended that the appellants' claim that the respondents acted illegally is not borne out by either the facts or the pleadings.

On ground 2 of the appeal, counsel for the appellant repeated his submissions in the Court of Appeal but further contended that the courts below erred in law and fact in failing to hold that before it could seize the tractor and trailer from the appellant, the Uganda Commercial Bank needed first to file objector proceedings or a substantive suit and as neither was filed, both the learned trial judge and the Justices of Appeal erred.

On this ground, Mr. Kanyemibwa contended that the High Court was correct to hold that no auction or sale of a property not owned by a judgment - debtor could validly take place, nor could an auction held outside the time limit fixed by a courts' warrant of attachment be legal. Counsel cited a passage from Halsbury's

Laws of England, 4th edition, Vol.45 and passages from R.F.V. Houston's: Salmond on the Law of Torts, 17th edition, pages 610 and 611, as authorities in support of his submissions.

Mr. Kamugisha Byamugisha adopted the arguments of Mr. Kanyemibwa on ground 3 also.

On ground 3, counsel for the appellant contended that the judge's holding on this matter was inconclusive and therefore the Court of Appeal was in error to confirm his judgment and orders in the words of the lead judgment of Okello, J.A, that *"under the circumstances, I cannot fault the trial judge's evaluation of the evidence before him nor can I fault his findings"* which in effect means that the Court of Appeal failed to evaluate the evidence as a whole and come up with its own decision on this issue independently.

Counsel for the appellant further contended that ownership of property *per se* is not sufficient to vitiate a sale by auction where the possession of the property to be sold was obtained validly and legally. Counsel cited **Chotabhi M. Patel v. Chotabhai M. Patel and Another**, (1958) E.A. 743 at 745 and 746 and **Transafrica Assurance Co. v. National Social Security Fund**, SC.C.A No. 1 of 1999 as authorities for his submissions that the appellant was a bona fide purchaser.

Counsel for the 1st respondent opposed this ground also. He contended that the record of proceedings in both the trial court and the Court of Appeal shows that the appellant was not a bona

fide purchaser without notice. Counsel pointed out that the preliminary enquiries undertaken on behalf of the appellant before the sale by auction and especially those by one Fred Mubiru (PW1) reveal quite clearly that the appellant knew or ought to have known that first, the tractor and trailer were owned and registered in the names of the Uganda Commercial Bank and, secondly, that the warrant of attachment was due to expire and did expire on 14/05/1994 long before she purportedly bought the items at an auction authorized by the warrant.

Kanyemibwa cited the case of **Banco Arabe Espanol v. Bank of Uganda**, S.C.C.A No.8 of 1998 and Article 22 of the **Sale of Goods** Act, (Cap. 82) as authorities for his submissions. Mr. Byamugisha for the 2nd respondent associated himself with the submissions and arguments presented by Mr. Kanyemibwa, counsel for the 1st respondent.

In my opinion, this appeal succeeds or fails on the determination of two interrelated factors. These are whether at the time of the sale by auction, the custodian of the tractor and trailer had the legal right to alienate the registered title to a third party and secondly, whether the auctioneer had authority to sell them. I am persuaded by the submissions of counsel for the respondents that since by the loan agreement the ownership of the tractor and trailer remained vested in the 1st respondent, neither Christopher Iga nor Livingstone Mukasa had authority to alienate those two agricultural implements. Without any lawful authority to transfer the ownership of the suit property, the auctioneers

had no powers to attach, let alone auction and sell the tractor and trailer.

Section 44(1) of the Civil Procedure Act on which both the trial court and the Court of Appeal relied, sustains this holding. It provides:

“the following property is liable to attachment and sale in execution of a decree, namely; lands, houses, or other buildings, goods, money, bank notes, cheques, bill of exchange, promissory notes, government securities, bonds or other securities for money, debts, shares in a corporation and, except as hereafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which or the profits of which he or she has a disposing power which he or she may exercise for his or her benefit, whether the property be held in the name of the judgment debtor or by another person in trust for him or her or on his or her behalf: ...”

I agree with Okello, J.A when in his lead judgment he opines;

“It is clear from the above section that the property to be attached in execution of a court decree must be those saleable property which belong to the judgment debtor or over which he or she has a disposing power for his or her benefit whether the property is held in his or her name or in the name of other person in trust for him or her or on his or her behalf.”

Sadly for the appellant, none of the property she purported to buy belonged to judgment debtor in the court decree under which the warrant of attachment and sale was issued. Christopher Iga, the judgment debtor had no disposing power over the tractor and trailer for his benefit.

The alleged power to auction and sell by the Intercity Auctioneers was totally undermined by the fact that by the time they had opportunity to auction the tractor and trailer, their alleged power under the warrant of execution had expired. By the time of its renewal, the purported sale had taken place. It follows that no title could pass to Imelda Nassanga, the appellant. As Odoki J, as he then was, observed in **Labanito Okwajja v. Giripasio Okello** (1985) H.C.B 85;

“It would be a bad state of the law to allow a judgment debtor to offer for attachment or a decree holder to deliberately attach and sell property which does not belong to the judgment debtor.”

Therefore, ground 1 of this appeal ought to fail.

The findings that the rights of the registered owner were never affected by any of the attempts to alienate the ownership of the tractor and trailer and, the attempt to auction the same under a court order failed by reason of the lapse of that order appears to me to be sufficient in the disposal of this ground. Consequently, ground 2 of the appeal ought to fail.

In my opinion, ground 3 of the appeal is misconceived. The principle is one of a bona fide purchaser for value without notice,

and not merely a bona fide purchaser. The courts below were correct to hold that the appellant had notice that the property did not belong to the judgment debtor, and that therefore she was not a bona fide purchaser for value without notice. Ground 3 also ought to fail. In the result, this appeal ought to fail.

I would award the costs of this appeal to the two respondents in this court, the Court of Appeal and High Court.

Dated at Mengo, this 21st day of September 2007

G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

**(CORAM: ODOKI; TSEKOOKO, MULENGA, KANYEIHAMBA, AND
KATUREEBE, JJ.S.C.)**

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STANBIC BANK } ::::::::::::::::::::::::::::::: RESPONDENTS
BAMUGUZANGA FARM (U) LTD }

{Appeal from the decision of the Court of Appeal at Kampala (Okello, Mpagi-Bahigeine, Byamugisha, JJA) dated 22nd July 2005 in Civil Appeal No. 119 of 2003}

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother Kanyeihamba, JSC, and I agree with his judgment and the orders he has proposed.

As the other members of the Court also agree, this appeal is dismissed with costs here and in the Courts below.

Dated at Mengo this 21st day of September 2007.

B J Odoki
CHIEF JUSTICE

THE REPUBLIC OF UGANDA
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AT MENGO

**(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA,
KANYEIHAMBA AND KATUREEBE, JJSC)**

CIVIL APPEAL NO. 10 OF 2005

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IMMELDA NASSANGA
APPELLANT

AND

1. STANBIC BANK }
RESPONDENTS }
2. BAMUGUZANGA FARM (U) LTD. }

[Appeal from Judgment of the Court of Appeal at
Kampala (Okello, Mpagi-Bahigeine and Byamugisha, JJA.)
dated 22nd July, 2005 in Civil Appeal No. 119 of 2003]

JUDGMENT OF TSEKOOKO, JSC.

I have read in draft the judgment prepared by my learned brother, Kanyeihamba, JSC., and I agree with his conclusions that the appeal must fail. I also agree with the orders he has proposed.

There can be no doubt that at law neither Mr. Christopher Iga nor the second respondent had property in the Tractor and its Trailer. So neither could lawfully dispose of it. Further the auctioneer's authority to sell the equipment by public auction expired on 23rd/5/1994. The subsequent sale passed no property in the equipment to the appellant. Indeed the sale may well have been by private treaty. The two Courts below were correct in the decisions each made.

I have an observation to make regarding the record of appeal. It is becoming increasingly clear that many members of the Bar do not bother to understand what the record of appeal should contain. In the record before us, pages 160 to 199 contain nothing but whole copies of authorities which were cited by counsel or tendered for reference in the Court of Appeal. These were no part of the record in the Court of Appeal.

Delivered at Mengo this 21st day of September 2007.

J. W. N. Tsekooko

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI; TSEKOOKO, MULENGA, KANYEIHAMBA,
KATUREEBE, JJ.S.C.)

CIVIL APPEAL NO. 10 OF 2005

BETWEEN

IMMELDA NASSANGA APPELLANT

AND

STANBIC BANK) RESPONDENTS
BAMUGUZANGA FARM (U) LTD)

*[An appeal arising from the judgment and decision of the Court
of Appeal, (Okello, JA; Mpagi-Bahigeine, JA; Byamugisha, dated
22nd July, 2005, in Civil Appeal No. 119 of 2003]*

JUDGMENT OF MULENGA, JSC

I have had the benefit of reading in draft the judgment of my learned brother Kanyeihamba, JSC. I agree with him that this appeal be dismissed and I concur in the orders he has proposed as to costs.

DATED at Mengo this 21st day of September, 2007

J. N. Mulenga
JUSTICE OF SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA

AT MENGO

**(CORAM: ODOKI, CJ, TSEKOOKO, MULENGA, KANYEIHAMBA,
KATUREEBE, JJ.S.C).**

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[An appeal arising from the judgment and decision of the Court of Appeal at Kampala, (Okello, Mpagi-Bahigeine, Byamugisha, JJ.A) dated 22nd July, 2005, in Civil Appeal No. 119 of 2003.]

JUDGMENT OF KATUREEBE, J.S.C

I have had the benefit of reading in draft, the judgment of my brother Kanyeihamba, J.S.C. I agree with him that this appeal be dismissed. I further concur in the orders he has proposed with regard to costs.

Dated at Mengo this 21st day of September 2007

Bart M. Katureebe
Justice of the Supreme Court