

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(EXECUTION DIVISION)

MISC. APPLICATION No. 1849 OF 2013
(Arising from EMA No. 2605 of 2012; arising from H.C.C.S. No. 272 of 2011)

MURAMIRA DAVID APPLICANT/DEFENDANT

VERSUS

CENTENARY RURAL DEVELOPMENT BANK RESPONDENT/PLAINTIFF

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The Applicant herein was the Defendant in H.C.C.S No. 272 of 2011, which the Plaintiff (Respondent herein) had instituted by way of a summary suit; and out of which, the Court issued an ex-parte decree against the Defendant. Subsequently, the Defendant was arrested (as judgment debtor) and committed to civil prison, in execution of the decree. He however produced two vehicles (Reg. Nos. UAM 084V and UAH 421M) in the presence of the Registrar of Court to secure his release from prison; following which, he was released. The judgment creditor then caused the sale of these vehicles to satisfy the debt owing to it from the Applicant. This application is for Court to set aside and stay the said execution, and for a declaration that the sale of the vehicles is invalid and illegal; hence, it should be set aside.

The Applicant's Counsel raised preliminary points of objection. First, was that there is no summary of evidence accompanying the Respondent's affidavit in reply, thus contravening the provisions of 0.6 r.2 of the CPR. Second, was the contention that the decree herein was not issued by this Court; and so, on the basis of 0.22, r.23 of the CPR, this Court has no power to stay its execution. Counsel, thus, urged Court to strike out the application. I have to dispose of these points of objection first. The provision for summary of evidence in our rules of procedure, arises from the need to give due notice to the opposite party, of the evidence such party should expect against him or her; and thus avoid taking such party by surprise at the hearing.

However where a pleading is accompanied by affidavit evidence, as the full evidence, or where the affidavit evidence is itself the pleading, as is the case here, I think the pleading is removed from the ordinary rule of procedure and placed in a special category. This application was canvassed entirely on affidavit evidence. Accordingly, the absence of a summary of evidence would not occasion any injustice. Similarly, neither of the parties hereto would derive any further benefit from a summary of evidence. The second point of contention is an erroneous appreciation of the law. Unlike with Magistrates' Courts, with many limited territorial jurisdictions carved out in Uganda, the High Court by virtue of section 14 of the Judicature Act, has unlimited territorial jurisdiction throughout Uganda

The Execution Division of the High Court is just a component of that Court, created for administrative convenience rather than any jurisdictional reason. A decree sent to the Execution Division from any Division or Circuit of the High Court does not fall in the category of decrees transferred to another Court within the meaning envisaged by the provisions of 0.22, r.23 of the CPR as is applicable to Magistrates' Courts, which are separate distinct Courts. The decree is merely sent to the Execution Division, which is a component of the same High Court, but specifically charged with the responsibility to execute it. Further, the remit of the execution process, unlike an application to set aside an ex-parte decree, which requires that a Court revisit its own decision, is not about the merit of the decree. I therefore find the preliminary points of objection devoid of any merit whatever.

The Applicant's complaint in his affidavit in support of the application is that the Respondent wrongfully sold his trucks off without any Court orders to that effect; and that there was no advertisement or valuation prior to the sale. However, the Respondent contends in reply that the Applicant had in fact mortgaged the trucks in issue to the Respondent; and that the resultant Court decree arose from this. Evidence was further adduced that upon the agreement of the parties, the trucks were sold to settle the judgment debt; and that in fact, prior to the sale, the trucks were valued, and the intended sale advertised in the Monitor Newspaper. There are annexures to the affidavit in reply in support of the alleged valuation and advertisement; and showing that the Applicant was given the opportunity to salvage the trucks from the pending sale.

From the records of the execution proceedings, the judgment debtor (Applicant herein) was committed to civil prison and his release was contingent upon his providing a security in the form of a truck, which he had apparently promised to; but had failed to do. Later when the

judgment debtor was produced before the Registrar Execution, where Counsel Ronald Sekidde appeared for the judgment creditor, and Counsel Allan Muhame appeared for the judgment debtor, this is what transpired: –

"18/2/2013

Judgment–debtor in Court

Ronald Sekidde for Judgment–debtor in Court

Sekidde –

We have received one of the securities, a Tata Truck and we have agreed that we advertise it for sale. If he pays the full amount it will be released to him. We have also agreed that given its condition it might not clear the whole Judgment debt and therefore upon his release he also shows the 2nd Truck which he says is in Nsambya since both are securities of the Bank.

Muhame –

Counsel's submission is true. The truck is parked outside Court premises. All parties have seen it. I hereby hand over the keys to Counsel for Judgment–creditor. The Judgment–debtor undertakes to negotiate with the Bank upon his release to receive his truck. He is willing too to show the 2nd truck to the Judgment–creditor.

Sekidde –

The Judgment–debtor should be set free.

Court –

The Judgment–debtor is set free upon the terms agreed by the parties."

Had the Applicant been denied the opportunity to show cause against being sent to prison, and this application sought his release from prison, I would have easily ordered his immediate release, as no one should suffer civil imprisonment without first being given an opportunity to be heard to show cause why the incarceration should not be done. This is in defence of the time honoured cardinal rule of natural justice that no one should be condemned unheard. Instead, the Applicant seeks to set aside the sale of his vehicles. Admitted, there was no Court order for the sale. However, it is quite apparent from the records that the Respondent pursued a two–pronged approach in its bid to recover its moneys owing from the Applicant; and it is evident that the

arrest and civil imprisonment of the Applicant arose from his failure to produce the vehicles, which had secured the loan.

It is clear from the Court record that when the Applicant produced the vehicles in Court, to secure his release from prison, his Counsel handed over the vehicles' keys not to the Court Registrar but to the Respondent's Counsel. After this, the Respondent then proceeded to dispose of the vehicles pursuant to the provisions of the mortgage, and not the Court order. Had the Applicant delivered the vehicles to Court, the sale would have had to be sanctioned by Court, to be valid. Accordingly then, the bailiff conducted the sale in his capacity as a general auctioneer, on the instructions of the Respondent, and not of the Court. Whatever returns he had to file regarding the sale of the vehicles was to the Respondent, and not to the Registrar of Court.

The agreement by the parties, by which the Applicant's Counsel handed the Applicant's vehicles over to the Respondent, apparently to enforce the provisions of the mortgage, removed the process from the domain of Court. I am therefore unable to interfere with the process. If the Applicant feels aggrieved by the process done purportedly in the pursuit of the provisions of the mortgage, then the course of action open to him is to institute a fresh suit against the Respondent. I therefore dismiss this application with costs to the Respondent.



Alfonse Chigamoy Owiny – Dollo

JUDGE

30 – 05 – 2014