

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

MISC. APPLICATION No. 2317 OF 2013
(Arising from H.C. EMA No. 2029 of 2013)

KCB BANK UGANDA LIMITED APPELLANT

VERSUS

LAGOON TRADING LIMITED..... RESPONDENT

AND

CIVIL APPEAL NO. 2381 OF 2013
(Arising from H.C. EMA No. 2029 of 2013)

LAGOON TRADING LIMITED APPELLANT

VERSUS

1. EMAR EXPORT & IMPORT CO. LTD.
2. KCB BANK UGANDA LIMITED :
RESPONDENTS

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

RULING

Owing to the fact that the two motions concern the same subject matter, and would best be dealt with together, Court has consolidated them in its ruling. The first motion urges this Court to set aside the garnishee order absolute, issued by the Registrar Execution against it in respect of EMA 2029 of 2013 – Lagoon Trading Ltd vs Emar Export & Import Co. Ltd & KCB Bank Uganda Ltd.; and that it be discharged from any liability arising there from. The Applicant's grounds are, first, that Court issued the garnishee order absolute in EMA 2029 of 2013 without hearing the Applicant. Second, is that the Applicant holds no account of Emar Export & Import Co. Ltd (the judgment debtor). Third, is that the Applicant is not indebted to the judgment debtor at all. Finally, that it is just and equitable that this application be granted.

In the affidavit sworn by one Anok Patrick, in support of the application, he claims that his failure to appear in Court on the date fixed for his appearance was inadvertent. From the record,

the official of the Applicant was duly notified to appear in Court to justify non-issuance of a garnishee order absolute, but he merely remarked to the process server that the debtor had no account with the Applicant. This was not sufficient as it was not a statement made before Court as he was required to do. Had he sworn an affidavit to that effect, and filed it with Court prior to the date fixed for his appearance, his inadvertent failure to report to Court as summoned would have been accorded a more lenient consideration.

From the affidavit in reply, sworn for the Respondent herein, and amply corroborated by the Court record in that regard, the Applicant caused the Registrar Execution to recall the warrant he had issued for the enforcement of the garnishee order absolute. The extracted order was however not in conformity with the order of recall of the warrant, as it also stated that the Registrar had also forbidden the enforcement, by execution, of the garnishee order absolute. Having made a finding that the garnishee held the judgment debtor's account, the Registrar had no powers to review his finding by making a converse finding that the garnishee in fact held no account of the judgment debtor. Similarly, while he could recall a warrant that was not yet executed, he had no power to forbid the enforcement of the garnishee order absolute he had issued.

Under the provisions of 0.50 of the Civil Procedure Rules, the jurisdiction lies with a judge of the High Court to reverse the decision of a Registrar. However, a proper construction of the Registrar's order shows that he did not set aside the garnishee order absolute. He merely, on the unjustified finding that the garnishee held no account of the judgment debtor, forbade the enforcement of the warrant by the process of execution. While this was a reversal of his earlier finding of fact on the matter, this fell short of setting aside the order absolute. That said, from the Court record, and similarly as has been pointed out in the affidavit sworn in support of the application, the garnishee was given a mere three days notice to appear in Court to show cause why the garnishee order absolute should not be granted.

Order 23 rule 1(3) of the Civil Procedure Rules provides for hearing upon the issuance of an order nisi, before the issuance of an order absolute, as follows: –

"At least seven days before the day of hearing, the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment debtor."

I should point out here that the period of at least seven days, provided for in the rules, for service upon the garnishee, could not have been arbitrarily determined. It envisages sufficient time accorded to a party, within which to take the necessary steps to respond to the issues stated in the

summons. To me it matters not whether the Applicant's failure to abide by the Court summons was out of inadvertence as its official claims, or it was an irresponsible act born out of deliberate conduct. The three-day period stated in the summons for appearance in Court did not conform to law; and so, it was unlawful. In the case of *Uganda Revenue Authority vs Uganda Consolidated Properties Ltd.* – C.A. Civ. Appeal No. 31 of 2000, Twinomujuni J.A. held that: –

"Time limits set by statutes are matters of substantive law and not mere technicalities; and must be strictly complied with."

In the result, I find that the first motion is resolved on this point alone. The garnishee order issued by the Registrar was so done in non-conformity with the law; and so, I set it aside with costs.

The second motion is an appeal against the order of the Registrar for reversing or setting aside the garnishee order absolute he had issued earlier in EMA 2029 of 2013. Following from the outcome of the first motion herein, it is quite clear that the second motion falls by the way side; as the record is clear that the Registrar never set aside his earlier order granting the garnishee order absolute. Therefore, I dismiss it; with costs too. Accordingly, the Registrar is hereby directed to pursue the execution process from the stage of grant of the garnishee order nisi, in EMA No. 2029 of 2013; but in strict compliance with the rules laid down in Order 23 rule 1(3) of the Civil Procedure Rules.



Alfonse Chigamoy Owiny – Dollo

JUDGE

06 – 03 – 2015