

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

**MISCELLANEOUS APPLICATION No. 318 OF 2014**  
*(Arising from EMA No. 1637 of 2012, arising from Mengo Civil Suit No. 545 of 2011)*

**LIVINGSTONE KYEYUNE ..... PLAINTIFF/RESPONDENT**

*VERSUS*

**ERIYA NAMUNNUNGU SSALONGO ..... DEFENDANT**

*AND*

**SAADI MWANJE ..... OBJECTOR/APPLICANT**

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

**RULING**

The Objector/Applicant herein has brought this application under the provisions of 0. 21 rr. 55, 56, & 57, and as well, 0. 52 rr. 1 & 2 of the Civil Procedure Rules, and section 98 of the Civil Procedure Act, seeking orders of this Court that the kibanja and premises thereon (herein after 'the suit property') located at Nanfuka Zone LC1, Rubaga Division be released from attachment; and costs of the application be provided for. The grounds of objection are that the suit property is his, and he has all the material time herein been in possession of it; and further that he was never a party to the head suit herein from which the warrant of execution was issued. He has supported his contention in the application with his own sworn affidavit.

In the head suit, the Plaintiff as administrator of the estate of the late Theresa Baseka, had sued the Defendant claiming that the suit property comprises part of the estate of the late Teresa Baseka. The Court heard and determined the suit ex parte; and issued an order for the eviction of the Defendant from the suit property. It is against the execution of this order that the Applicant now objects; claiming that he purchased the suit property from the Defendant in October 2010 after satisfying himself that the Defendant was the lawful owner, developed it, and has been in possession since. The Plaintiff, in his affidavit in reply, contends that the suit property formed part of the estate of the late Theresa Baseka; but that the Defendant forcefully took possession thereof, and this gave rise to the suit resulting in the decree now being executed.

It is now a settled principle of law that a Court faced with an objector suit is obliged to investigate whether at the time of the attachment complained of, the objector or the judgment debtor was in possession of the suit property. If the judgment debtor was in possession, then the execution of the warrant must continue. However, where the Court establishes that at that time the suit property was in the possession of the Objector, then the Court has to determine whether the Objector had such possession on his or her own account, or did so in trust for the judgment debtor. If it is the former, then the Court must release the property from attachment forthwith. However, if it is the latter, then the judgment debtor has legal possession of the suit property; and so, the attachment, in execution of the warrant, stands.

In the matter before me, the head suit proceeded ex parte; hence, the Court did not hear from the Defendant. The Objector/Applicant herein was not a party to the suit; and yet the Plaintiff's affidavit points to his knowledge that the Objector was all along in possession, although his contention is that the Objector was aware that the Defendant had no right of possession of the suit property. The Objector has however attached a copy of a sale agreement between the Objector and the Defendant, endorsed by the LC officials of the area of the time. He has also attached to his affidavit, a copy of a letter written by the LC officials of the area, to the High Court Deputy Registrar, attesting to the gift inter vivos between the late Theresa Baseka and the Defendant.

It is thus quite clear that the Objector/ Applicant has, and to the knowledge of the Plaintiff, been in possession of the suit property; and the order purporting to evict the Defendant from the suit property would instead affect him. Given that his possession of the suit property is not in the name of the Defendant, but basing on his own proprietary right over it, having purchased the same from the Defendant, his objection to the warrant of eviction there from is well founded; and is hereby sustained. If there is any contention as to whether he bought the suit property with the knowledge that the Defendant was in wrongful possession, then such contention must be determined in a fresh suit brought against him in a competent Court.

For the reasons given above, I must and hereby do release the suit property from the impugned attachment forthwith; and award costs of the application to the Objector/Applicant.



Alfonse Chigamoy Owiny – Dollo

**JUDGE**

**23 – 02 – 2015**