

IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
EXECUTION AND BAILIFFS DIVISION
MA NO. 2601 OF 2018
ARISING FROM EMA. NO. 1730 OF 2015
(ARISING FROM CIVIL SUIT NO. 208 OF 2009)

SEBULIBA HARRIET.....OBJECTOR

VERSUS

- 1. INSTANT CASH INTERNATIONAL LTD**
- 2. MWANGA IBRAHIM..... JUDGMENT CREDITOR**

AND

SEBULIBA SAMUEL

SEKAMATE IAN MOSES.....JUDGMENT DEBTORS

BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

1. The Applicant Sebuliba Harriet moved court by notice of motion lodged on November 2, 2018 under order 22 rules 55 and 57 of the Civil Procedure Rules for one substantive order as follows:

The property, kibanja and developments, measuring approximately 40 decimals on Block 115 Plot 30 situate at Masooli village Nangabo sub-county, Wakiso district, be released from attachment and or execution.

2. The motion was supported by affidavit of Sebuliba Harriet, objector. The Respondents relied on affidavits of Sadala Wandera managing director of Instant Cash International Ltd, the judgment creditor and Mwanga Ibrahim, the purchaser.
3. On March 10, 2020 when parties appeared before me and the Ruling reserved for delivery on notice.

Background

4. On September 10, 2009, an ex parte decree was entered against Sebuliba Samuel and Sekamate Ian Moses in Commercial Court Civil Suit No. 208 of 2009 for payment of 146,800,000/ . On August 13, 2015, Instant Cash Ltd applied for execution of the decree which now stood at 135,968, 500/ after deducting 15,000,000/ that had been paid to Instant Cash Ltd. After attempts to arrest the debtors failed, Instant Cash Ltd then applied for attachment of land comprised in Mailo register 1545 Folio 3, Plot 63 at Kikaya on August 24, 2016.
5. The record shows that on November 9, 2016, Amba Ventures Ltd commenced objector proceedings vide MA N0. 2497 of 2016 against the attachment of the Kikaya land on the grounds it was in possession and having purchased it from Sekamate, the second judgment debtor, allegedly on August 15, 2016, after the decree sought to be executed was passed was way back on September 10, 2009.
6. On November 23, 2017, parties entered into a consent whereby Amber Ltd the objector paid Instant Cash Ltd 50,000,000/ and in return, Instant Cash Ltd agreed to drop the attachment of the Kikaya land. It seems that after this 50,000,000/ was paid, the debt now stood at 85, 968,500/ and it was for the recovery of this sum that a warrant of arrest was effected against Sebuliba on May 2, 2018.
7. Upon arrest, a consent was recorded between Instant Cash and Sebuliba Samuel in which he deposited a sale agreement for property at Masooli, Nangabo, Wakiso district for attachment should he fail to pay the decretal sum. Sebuliba Harriet, the current objector signed off as the guarantor and also gave her express consent to the attachment in para. 3 of the consent in the following terms:

By signing this consent, the first judgment debtor's spouse consents to the said attachment in case of default.
- 10 I have failed to trace a fresh application for execution after the consent between parties but it seems that on August 2, 2018, the deputy registrar issued a warrant of attachment for the Masooli property that was later advertised in the Monitor Newspaper of September 6, 2018 with the date of sale given as 'after expiry of 30 days.' On October 25, 2018, bailiff Kaweesi submitted a valuation report of the attached property and requested the deputy registrar for an order of sale. It seems that because the warrant that

was issued on August 2, 2018 was to expire on October 31, 2018, a day after the deputy registrar authorised the sale. On November 2, 2018, bailiff Kaweesi returned the warrant having sold the property at 160,000,000/ of which the judgment creditor was paid 85,968,500/ while the balance was retained by the bailiff pending a warrant to give vacant possession.

- 11 In their submissions, both counsel addressed me on two substantive issues:
 - a. Whether the suit property should be released from attachment and or execution.
 - b. Whether the purported sale of the above property be nullified or set aside.

The law

12. Both counsel gave the correct legal interpretation of Order 22 rules 55 with aid of precedents. This rule sets out the circumstances that must be evident before an objector's challenge can be sustained. In other words, the objector must adduce evidence to show that at the date of the attachment, he or she had an interest in the property attached.
13. Under order 22 rule 56, for the court to release property attached from attachment, it must be satisfied that at the time of the attachment, it was not in possession of the judgment debtor or of some person in trust for him or in possession of a tenant answerable to the judgment debtor; or it was in possession of the judgment debtor but held in trust for another person; or the judgment debtor was in possession partly on his behalf and partly on another's behalf.
14. In **David Muhenda & three others v Margret Kamuje SCCA No. 9 of 1999 which was cited in High Court Civil Appeal No. 412 of 2011 Mary Nakato v Nanyonga Rose** by Musoke J as she then was, Her Lordship reiterated the key requirements that for the property to be released from attachment.
15. Although the court has a duty to investigate the claim by the objector that he or she has an interest in the property and to rule out the fact that the judgment debtor is in possession physically or constructively, the Muhenda case introduced yet another area of focus by the court, namely,

questions of legal right and title are not relevant except in so far as they may affect the decision as to whether the possession is on account of or in trust for the judgment debtor or some other person. '

The evidence

- 12 An analysis of the affidavit evidence of Sebuliba Harriet, on the face of it, shows that the property was jointly owned by Harriet Sebuliba the objector and Sebuliba the judgment debtor having purchased it from Sekamate Ian Moses (2nd judgment debtor) on June 14, 2014. An examination of the sale agreement clearly shows that the subject matter is 40 decimals out of Block 115 Plot 30 Kyadondo, Masooli village, Nangabo sub county, Wakiso district at a price of 25,000,000/.
- 13 Regarding further details of the land, it is indicated that the land is registered in the names of the administrator and the beneficiary of the plot is Specioza Namakula who then sold it to Sekamate Ian Moses. Furthermore, that the said Namakula was to present the land title to Sekamate who would then pass it over to the new purchasers Samuel and Harriet Sebuliba together with duly transferred forms.
- 14 The main ground of Harriet Sebuliba's objection to the attachment is that she jointly owns this property with the judgment debtor Sebuliba Samuel, her husband and therefore it ought to be released from attachment.
- 15 On the other hand, Sadala the managing director of Instant Cash Ltd, deposed that Sebuliba Samuel was arrested at the suit property on April 28, 2018 by bailiff Kaweesi and in the presence of his girlfriend Nalwoga Jane and on being brought to court, Sebuliba Samuel entered into a consent at execution stage in which he undertook to pay the decretal sum by June 15, 2018 upon failure of which, his property at Masooli would be sold in execution. Sebuliba Harriet signed off as the guarantor.
16. Advocate Kisambala deposed an affidavit in which he affirms that Sebuliba called him on April 27, 2018 when he was under arrest at the Execution Division and after negotiations with the bailiff, and in the presence of his wife Sebuliba Harriet, pledged his land at Masooli, Nangabo as security and that it is the objector who produced the sale agreement. Kisambala deposed that Sebuliba is his uncle and it was in that capacity he responded when the uncle called him.
17. After the court authorised the sale on October 30, 2018, the property was sold on November 1, 2018 to Mwangi Ibrahim at 160,000,000/. Worthy of note is that this property originally belonged to Sekamate the 2nd judgment debtor who then sold it to the Sebulibas in 2014 long after the decree was entered against him and Sebuliba on September 10, 2009. This circus of running around by the judgment debtors must be put to an end.

18. To return to whether the objector has established an interest in the Masooli property, the fact that she is a joint owner with her husband Sebuliba is undeniable. At the same time, the same Sebuliba and Sekamate have definitely played games with the legal system after Sekamate sold the Masooli property to Sebuliba when execution was eminent. Harriet Sebuliba, the objector and wife of Sebuliba has not come to court with clean hands having been party to the sale agreement that was intended to defeat recovery of a debt. As if that was not enough, she expressly guaranteed the payment of the debt and gave her consent to attach and sell their Masooli property.
19. The history of this case reveals how land at Kikaya comprised which the judgment creditor identified as belonging to Sekamate was found to have been sold to Amba Ventures Ltd in August 2015 and was released from attachment in MA. NO. 2497 of 2015.
20. While this is not an insolvency case, the principle in section 257 of the Insolvency Act 2011 that where a company in liquidation transfers property after liquidation has commenced against it, such transfer can be avoided is relevant. Likewise, the transfer of proprietary interest by Sekamate to his fellow debtor Sebuliba in 2014 when they were indebted to the judgment creditor shall be avoided on the ground it was a clear move to evade payment of the decretal sum.
21. Harriet Sebuliba jointly bought Masooli property with her husband (judgment debtor Sebuliba) from debtor Sekamate in 2014 and then upon Sebuliba's arrest in execution of a court decree, she agreed to surrender her interest in the property to recover the decretal sum. In spite of these developments, Harriet Sebuliba now claims an interest in the property. I find her claim a deliberate intention to defeat the judgment creditor's realization of the judgment debt, a state of affairs that this court shall not close its eyes to.
22. Under these circumstances, Harriet Sebuliba lost any claim to the property, having surrendered it to satisfy the debt and being party to its purchase in 2014 sale when execution was eminent.

Issue No. 2: whether the purported sale of the property be should be nullified or set aside.

23. The gist of the submissions of counsel for the Applicant is that the sale was conducted before the expiry of 30 days and that whereas the warrant of attachment and sale was issued on October 31, 2018, the sale of the attached property took place on November 1, 2018, literally the next day after the warrant was issued. The Applicant does not dispute that the warrant was

originally signed and sealed on August 2, 2018 to expire on October 31, 2018.

24. I am persuaded by the submissions of counsel for the Respondent that the warrant had already run the full 30 days from September 6, 2018 until the date of sale on November 1, 2018. Accordingly, the sale was validly conducted.

Remedies

25. It was not disputed that the warrant of attachment for the Masooli property was to recover 85,968,500/ since 50,000,000/ had been paid previously in MA NO. of 2497 of 2016.
26. It is a fact that the Masooli property was sold at 160,000,000/ yet the warrant was for recovery of 85,968,500/. This being the case, rather than release the property from attachment, I shall order the bailiff to pay the balance to the Sebulibas after deducting taxed costs of the bailiff. The said balance shall be paid into court for onward transmission to the Sebulibas jointly. The effect of this decision is that the sale of the property is hereby validated.

Orders

- a. The application is dismissed.
- b. The bailiff has already paid the judgment creditor 85,968,500/ that the outstanding decretal sum.
- c. The balance of 74,031,500/ shall be paid into court for onward transmission to the Sebulibas jointly less reasonably incurred taxed costs of the bailiff and fees permitted by the Court Bailiffs (amendment) Rules, 1991.
- d. The sale of property measuring 40 decimals on Block 115 Plot 30 situate at Masooli village Nangabo sub-county, Wakiso district, is hereby confirmed.
- e. The Applicant shall pay the judgement creditor costs of this application which I assess at 3,000,000/.

DATED AT KAMPALA THIS 1ST DAY OF SEPTEMBER 2020.

HON. LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Kintu, Nteza & Co. Advocates for the Applicant
Bbale & Co. Advocate for the Respondent