THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA
AT MBALE
HCT-04-CV-CA-0118 OF2010
[ARISING FROM MISC. APPLICATION NO 190 OF2009]
[ORIGINATING FROM m/a 189 of 2009]
[ARISING FROM HIGH COURT CIVIL APPEAL NO 61 OF 2009]
[ORIGINATING FROM BUTALEJA CIVIL SUIT NO 42 OF 2003]

EDIRISA GABAMI……APPELLANT

VRS

MWAMINI NAMUGOMBE……RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

This is an appeal from the orders of the learned Assistant Registrar. The appellant is represented by M/**S Mutembuli & Co. Advocates** while the respondent is represented by M/**S Fredrick Francis** & Associates Advocates.

The background to this appeal is that the plaintiff in civil suit No 42 of 2003 in Butaleja Court was the respondent.

Judgment was entered in her favour. A bill of costs was taxed exparte. In execution of the decree the appellant was arrested on 8th September 2009 and detained in Civil prison. One week in civil prison, the appellant made an interim application No 005 of 2009 exparte for stay of execution and at the same time prayed to be discharged from civil prison. The two applications were granted on 30th September 2009 without him paying the judgment debt or making a security deposit for the due performance of the decree as is required under 0. 43 r 3 (c) C.P.R .The orders were made pending hearing of an

application No 189 of 2009 interparties and civil appeal No 61 of 2009. That later in time the respondent applied vide application No 216 of 2009 to the judge to have this order varied and/or the appellant to deposit security but according to the respondent, the Judge directed the Registrar to entertain the matter. The same was dismissed. Then the respondent filed a fresh application 006 of 2010 seeking the same relief. The order as granted but the appellant has not complied with the order to deposit shillings 10.000.000/= .

The appellant was dissatisfied with the above trend hence this appeal.

The grounds of appeal are that:

a) The learned Assistant Registrar made the order for security for costs dated 29th November 2010 when she was functus officio.

b) The order appealed against is null and void abinitio as the learned Assistant Registrar lacked jurisdiction.

c) The learned Assistant Registrar cannot in law set aside or revise her own order dated 30th September 2009.

d) That after the order of the learned Assistant Registrar dated 30th September 2009 the only remedy for the respondent was to appeal against the said order to a judge of the high Court.

e) The appellant as the party aggrieved by reason of the said order is entitled to have the same set aside ex debito justicea.

Court allowed respective counsel to file written submissions which I have studied and comprehended. I have also considered the law applicable.

I am in agreement with **Mr. Mutembuli** learned counsel for the appellant that the learned Registrar having made the orders of release of the appellant, her court no longer had jurisdiction to entertain availed application to review her orders that were granted unconditionally moreover without hearing both parties.

The application for release of the appellant from civil prison was made under section 43 (3) (b) of the Civil Procedure Act pending a substantive application for stay of execution vide Misc. Application 189 of 2009. According to the respondent the registrar acted under O. 43 r 4 (3) (d) C.P.R. This is correct but my quarrel is why the applications were compartimentalised. O. 43 r 4 (3) C.P.R provides that "

> " (3) No order for stay of execution shall be made under sub rule (1) or (2) of this rule unless the court making it is satisfied
>
> (a) that substantial loss may result to the party applying for stay of execution unless the order is made.
>
> (b) That the application has been made without unreasonable delay; and
>
> (c) That security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

In my considered view these three conditions must co-exist before the application for stay of execution is granted. They must exist in one application. The law does not provide for several applications regarding each requirement to be filed in a separate suit. Otherwise it would be a recipe for numerous applications for a relief provided for under one law.

If allowed to exist one would apply for stay of execution citing substantial loss in one application. Thereafter another application would be filed citing non delay in applying for stay of execution. Later in time another application would be filed regarding provisions of security like it was in this case. This is unacceptable and contrary to the intention of O. 43 r 4 (3) C.P.R when the learned Registrar considered the application and granted it. She ought to have considered the law as a whole.

Having granted the application for an interim order of stay of execution, the learned Assistant Registrar acted under O. 43 (4) (3) Civil procedure rules and she became functus officio thereby. Her failure to order for security for costs then was a matter which would be considered by the Judge on appeal not through a fresh application.

I will find that the order appealed against was null and void abinitio. The learned Registrar new order was tantamount to revising her earlier decision which is not allowed in law.

Consequently I will allow this appeal with costs.

I will order that the orders of the Assistant Registrar of 29th November 2009 be set aside.

Stephen Musota

Judge

29/11/2012