THE REPUBLIC OF UGANDA

IN THE HIGH OF UGANDA AT KAMPALA

MISCELLANEOUS APPEAL NO.290 OF 2012

ARISING OUT OF EXECUTION MISC.APPLICATION NO.889 OF 2012

(Arising out of HCCS NO.400 OF 1995 and C.A CIVIL APPEAL NO.18 OF 2006)

KAMPALA CAPITAL CITY ATHORITY

(Formerly KAMPALA CITY COUNCIL) ::::::::::::::::::::::::APPELLANT

AND

1. **STANBIC BANK (UGANDA) LTD**
2. **DFCU BANK LTD :::::::::::::::::::: GARNISHEE**

VERSUS

1. **JOHNSON MUGISHA**
2. **NANKYA A. REGINA**
3. **JOHN BUWEMBO**
4. **JAMES MUTUMBA & ORS ::::::::::::::::::::::::: RESPONDENTS**

BEFORE: HON.LADY JUSTICE ELIZABETH MUSOKE

RULING

This is appeal by way of Notice of Motion brought under the provisions of **Section 98 of the Civil Procedure Act, Cap 71, Order 50 rule 8** and **Order 52 rules 1 and 2** of the **Civil Procedure Rules, SI 71-1**, seeking for orders that; the ruling of the learned Registrar in **Miscellaneous Application No.889 of 2012** attaching the Appellant's collection Accounts with the Garnishee Banks be reversed, the Garnishee Decree Absolute be set aside and that an order doth issue that **Miscellaneous Application No.889 of 2012** be heard on its merits.

The grounds of the appeal were stated to be as follows;

a. The learned Registrar erred in law and fact when he made the Garnishee Order Nisi, Absolute without hearing the parties on the merits of the application.

b. The learned Registrar erred in law when he made the Garnishee Order Nisi, Absolute without examining the Garnishee Banks.
c. The Learned Registrar erred in law when he ordered for the attachment of monies held in the appellants collection accounts held in the Garnishee Banks without considering the law on Central Government held accounts.
d. The proceedings in Miscellaneous Application No.889 of 2012 were irregular in as far as no judgment, decree or order of the court sought to be enforced ever existed.

The notice of motion is supported by the affidavit of **Mugisha Caleb**, who is the manager Litigation of the Appellant. He stated that on the 31st May, 2012, when the application to attach the appellant's collection accounts came up for hearing before the Registrar Execution, the respondent's counsel applied for an adjournment to enable them respond to certain matters raised by the appellant, and on 8th June, 2012, when it came up for hearing again, the appellant's Counsel raised preliminary points of law. Upon hearing the parties on the preliminary points of law, the Registrar adjourned the matter to the 12th June, 2012, for a ruling on the preliminary points of law. However, on the 12th June, 2012, the Registrar read a ruling which in effect disposed of the main application.

It was Mugisha Caleb's contention that the Garnishee banks were never examined by the Registrar and that the parties were not heard on the merits of the application. He further contended that the ruling by the Registrar that the Settlement and Release Agreement entered into by the parties could form a basis for a decree of the Court of Appeal was erroneous and not grounded in law; and that the Appellant did not have power to spend from the attached accounts because the Garnishee banks were under instruction by the Accountant General to transfer monies on these accounts to the Bank of Uganda which would certify the monies and pay what is due to the Appellants Operational Accounts for expenditure.

The first respondent; **Johnson Mugisha** swore an affidavit and a supplementary affidavit in reply to the appeal. He stated that the respondents sued the appellant in **HCCS No.400 of 1995**, and a judgment and decree were passed in favor of the respondents. The respondents presented the said judgment and decree in the application for Garnishee proceedings, and the actual amounts payable under the Settlement Agreements and Release was agreed upon by the parties; the calculations for the amounts payable were submitted to the then Town Clerk and the Executive Director of the appellant and no objection was raised.

It was **Johnson Mugisha's** further contention that the Registrar addressed the Garnishee proceedings properly; and in over-ruling the preliminary objections of the Appellant and issuing

a Decree Absolute, he was aware that the proceedings were execution proceedings where only the Garnishee Banks are required to appear before the court to acknowledge or dispute the debts. The garnishee banks did not dispute holding money on behalf of the judgment debtor, and thereupon the Decree Absolute was issued by court; and considering the fact that an Order Nisi had already been issued by court, the issues that were raised by counsel for the appellant were misconceived and irrelevant in law. He averred that this appeal was overtaken by events and there is nothing to stay since the status of the accounts had changed by reason of the Decree Nisi having been made absolute. In addition, he contended that the appellant herein had **no locus standi** to bring this appeal, as the proceedings against it were complete by a consent judgment in **HCCS No.400 of 55** and **Civil Appeal No.18/2006**, and a Decree Nisi issued by this court made Absolute.

In reply, **Sarah Nambasa**, an employee of the 1st garnishee, swore an affidavit on behalf of the 1st Garnishee. She stated that the 1st Garnishee was served with a garnishee Order Nisi in Misc Application No.889 of 2012, and on 31st May, 2012, she appeared before the Registrar in answer to the garnishee Order Nisi. She was asked to hand over to court a bank statement of the account held by the appellant with the 1st garnishee. On the 13th June, 2012, the 1st garnishee was served with a garnishee order Absolute. The 1st garnishee complied with the said order and remitted the money owing to the credit of the appellant to the respondent's/judgment creditor's lawyers.

The 2nd Garnishee also filed an affidavit in reply, sworn by Prossy Namuli Yawe, a legal officer with the 2nd garnishee. She stated that on 23rd May, 2012, the bank received a Garnishee Order Nisi, in respect of the appellant for a sum of UGX 1,566,252,698/=. When the matter came up, Pious Olaki appeared and informed court the amount owing to the credit of the appellant. On 13th June, 2012, the bank received an Order of garnishee absolute. On the 21st June, 2012, the bank honored the garnishee absolute and paid the sum of UGX 800,000,000/= in favour of the respondent's Lawyers. She contended that in making the above payments, the bank was complying with orders of court and in the circumstances, it is not possible to reverse the order as the bank is no longer in control of the funds and the execution in the matter was completed.

In the appellant's affidavit in rejoinder, it was contended that it is not only the garnishee banks that were to be examined in garnishee proceedings. Further, that the objections raised by Counsel for the Appellant during the garnishee proceedings were intended to put court on notice of illegalities inherent in the application but the same were erroneously and irregularly disregarded, thereby occasioning a miscarriage of justice.

At the scheduling conference, the following issues were agreed upon by the parties for resolution:

1. Whether there was any decree and/or judgment of the High Court in HCCS NO.400 of 1995.
2. Whether the appellant has locus standi to challenge the Garnishee proceedings by way of an appeal arising out of the order in Garnishee proceedings in HCCS No.400 of 1995.
3. Whether the court can intervene in this matter where the garnishee was made absolute and money was paid by the garnishees to the respondents.
4. Whether the proceedings in Miscellaneous Application No.889 of 2012 were irregular in as far as there was no judgment, decree and order of the court sought to be enforced and/or executed.
5. Whether the Registrar Executions and Bailiffs erred in law and fact when he made the Garnishee order Nisi, Absolute without examining the Garnishee Banks.
6. Whether the Registrar Executions and Bailiff's erred in law and fact when he ordered for the attachment of monies held in the appellant's collection accounts held in the Garnishee Banks without considering the law on Central Government held accounts.
7. What remedies are available to the appellant.

However, I shall address issues 1 and 4 together, followed by issues 5 and 6, and then issues 2, 3 and 7 respectively.

ISSUES 1 and 4;

Whether there was any decree and/or judgment of the High Court in HCCS NO.400 of 1995.

Whether the proceedings in Miscellaneous Application No.889 of 2012 were irregular in as far as no judgment, decree and order of the court sought to be enforced and/or executed.

It was the submission of Counsel for the appellant that there was no decree entered in **HCCS No.400 of 1995** in favour of the respondents as there was no judgment of court, whether by consent or otherwise and therefore the execution proceedings were not grounded on a decree of any court as required by Order 23 rule 1 of the Civil Procedure Rules. Further, that the Court of Appeal had pronounced itself on the existence of a decree in the **Court of Appeal Civil Appeal No.18 of 2006**, and it was held that there was no decree of court to be executed and therefore no proper appeal before the court to hear and determine on merits. Counsel submitted that a decree

can only be extracted from a judgment; and if the settlement and release agreement was to be construed as a decree, it would have to be backed up by a judgment on court record.

In the alternative, counsel for the appellant submitted that even if the Settlement and Release Agreement was to be construed as a decree, the same did not disclose a definite amount and was only declaratory in nature. The proper procedure would have been for the respondents to apply to court for consequential orders certifying the amount payable, and subsequently garnishee proceedings would be instituted to recover the said certified amount. It was counsel's contention that the garnishee proceedings having been initiated without a decree were irregular, an abuse of court process, contumacious and illegal, and court could not uphold the same. He relied on **Makula International Ltd Versus His Eminence Cardinal Nsubuga & Anor [1982] HCB 11**, to support the above submission.

On the other hand, Counsel for the respondents submitted that there was a consent order entered into between the respondent and the Appellant's Counsel in the Court of Appeal, signed on the 6th September, 2007, and duly endorsed by the Registrar of the Court of Appeal in Civil Application No.33 of 2006. This constituted a consent order and it is on its basis that garnishee proceedings were commenced. Counsel contended that much as the Court of Appeal had ruled that there was no decree and no proper appeal, on the 21st March, 2006, a Settlement and Release Agreement had been signed by Counsel of either side; the ruling of the Court of Appeal did not set aside the Settlement and Release Agreement.

Counsel for the respondents submitted that the consent filed by Counsel for the appellant and the respondents in the Court of Appeal bound all parties and could not be set aside unless it was entered into by fraud or misrepresentation. He relied on the authorities of **Musa Nsimbe Versus Joseph Nanjubu, Misc Application No.360 of 2012** and **Brooke Bond Liebig Ltd Versus Mallya [1975] 1 EA 266**, to submit that a consent judgment cannot be varied or set aside except for fraud and misrepresentation. The appellant has not raised any grounds for setting aside the consent judgment.

Counsel for the respondents further contended that the consent order of the Court of Appeal signed on the 6th September, 2007, on the same day the ruling of the court of Appeal was read superseded the said ruling of the Court of Appeal; it is not only the Settlement Release Agreement that could be said to be the basis upon which the respondents commenced garnishee proceedings, but also on the consent order filed in the Court of Appeal.

I have carefully considered the application and submissions of Counsel and the circumstances surrounding this appeal.

From the affidavit in reply to the appeal and from the submissions of counsel for the respondents, it appears to me that garnishee proceedings were commenced basing on a Settlement Agreement and Release, signed on the 21st March, 2006, and on the Court order dated 6th September, 2007. Accordingly, I find that the first question to determine is whether the Settlement and Release Agreement was a judgment within the meaning of the law upon which garnishee proceedings could be premised in execution.

Parties to a suit are free to settle their disputes and reach an agreement out of court. When such an agreement is signed and sealed by court, it constitutes a Consent agreement/judgment from which a decree may be extracted***(See Peter Mulira Versus Mutual Courts Court of Appeal Civil Appeal No.15 of 2002***). I agree with the contention of counsel for the respondents that such a judgment cannot be set aside unless it is entered into by fraud or misrepresentation**.(*See Musa Nsimbe Versus Joseph Nanjubu; Misc application No.360 of 2012***). From looking at the Settlement and Release Agreement on record, it appears to me that Counsel for both the appellant and the respondents signed the agreement, but it was neither registered nor endorsed by court. This cannot be said to be a consent judgment within the meaning of the law. The said agreement can only become property of court upon being endorsed and registered by court. I therefore find that the Settlement and Release Agreement dated 21st March, 2006, could not legally form a basis for the commencement of garnishee proceedings in court.

It was the contention of Counsel for the respondents that the Consent order of the court of Appeal signed on the 6th September, 2007, was also the basis of the garnishee proceedings. First of all, note from the reading of the application lodged by the respondents for garnishee proceedings, that it is not mentioned that the said order forms basis for the application. Nonetheless, I shall address whether the said order could form a basis for the commencement of garnishee proceedings.

An order is defined under **Section 2 of the Civil Procedure Act, Cap 71**, as the formal expression of any decision of a civil court which is not a decree. Accordingly, an order emanates from a decision of court and cannot therefore stand on its own. The order in issue partly reads as follows;

> *"**The application be and is hereby dismissed on the ground that in case there are plaintiffs or people being represented in this case who have not been paid their***

terminal benefits, the formula that the respondent used to pay some retrenchees before this application was heard, can be used to pay them and that therefore it is not wise to remit the file back to the High Court for trial.”

It is evident that the above order was resulting from the decision/ruling in Court of Appeal Misc Application No.33 of 2006. In my opinion the wording in both the ruling and the order are directory/ a guide on what could be done and do not seem to order the parties on what was to be done. No figures were mentioned on what was to be paid to each of the respondents. Therefore, the respondents or counsel for the respondents should have worked out details of the amounts that were to be paid to the respondents and a consent should have been signed by both parties and endorsed by court in that regard. The correspondences between the parties after the said order were not enough to form a conclusive basis for the respondents to commence garnishee proceedings.

I accordingly find that there was no judgment or decree in HCCS No.400 of 1995, and the proceedings in Misc Application No.889 of 2012 were irregular in as far as there was no judgment/decree or order of court sought to be enforced and/ or executed.

ISSUES 5 and 6.

Whether the Registrar Executions and Bailiffs erred in law and fact when he made the Garnishee order Nisi, Absolute without examining the Garnishee Banks.

Whether the Registrar Executions and Bailiff’s erred in law and fact when he ordered for the attachment of monies held in the appellants collection accounts held in the Garnishee Banks without considering the law on Central Government held accounts.

It was the submission of Counsel for the appellant that the garnishee banks were not examined by court as legally required to show cause why they should pay or transfer the moneys on the attached bank accounts in issue. It was also the submission of Counsel that the accounts that were attached are collection accounts which, though in the names of KCCA, were operated by Bank of Uganda and the Accountant General; therefore, without the Bank of Uganda as a party to the garnishee proceedings in issue, it was erroneous for the Registrar to issue a court order to attach the monies in the said collection accounts.

It was the submission of Counsel for the respondents that the Garnishee Banks were examined by the Registrar before making the order nisi absolute and in issuing the decree absolute, the Registrar was aware that the proceedings were execution proceedings where only the Garnishee Banks are required to appear before the court to acknowledge or dispute the debts. He relied on ***Kateera & Kagumire Advocates Versus Administrator General and UCB Miscellaneous Application No.829 of 2001,*** where court held that the duty of the Garnishees was only to inform court whether or not the account belonged to the Applicant and whether there were sufficient funds on it. Counsel contended that the Garnishee Banks did not dispute holding any money on behalf of the judgment debtor. Further, that there was a hearing of the matter, the garnishee banks were examined but they never stated at any time that those accounts were never available for attachment by way of Garnishee proceedings and there was no application for objector proceedings by the Attorney General stating that the said accounts attached were not liable to Garnishee orders.

I have perused the proceedings prior to the granting of the garnishee order absolute and I find that the Garnishee banks were given an opportunity to show cause why they should not pay or transfer the moneys on the attached bank accounts. On the 31st May, 2012, before the adjournment to enable the respondents reply to the affidavit filed by the appellant, Sarah Nambasa while appearing on behalf of the 1st Garnishee informed Court that the appellant held an account with the bank and availed a provisional statement for the attached account. On the 8th June, 2012, Pius Olaki appearing on behalf of the 2nd Garnishee informed court that upon receiving the Garnishee Nisi, the bank had frozen the attached account pending the outcome of the proceedings in court, and he undertook to produce a statement of account to court, which he later availed. On all these occasions, the Garnishee banks had an opportunity to show cause why the Garnishee nisi should not be made absolute, but they instead availed court with information that seemingly pointed to the fact that the accounts could be attached. I agree with the contention of counsel for the respondents that in garnishee proceedings the Garnishee Banks are only required to appear before the court to acknowledge or dispute the debts. In the present case, the Garnishee Banks appeared and acknowledged that the appellant held accounts with them and it was not necessary for court to question them and cross examine them after the banks had availed the necessary information, unless the banks raised any objections in relation to the attachment.

With regard to the argument that the attached accounts were collection accounts which, though in the names of KCCA were operated by Bank of Uganda and the Accountant General, and were therefore not available for attachment, I find that these were allegations which ought to have

been proved by the appellant through the Attorney General. I agree with the decision of the Registrar that since the Garnishees had provided information regarding the impugned accounts to the effect that the accounts belonged to KCCA, a garnishee order absolute could be issued on that basis.

ISSUES 2 and 3,

Whether the appellant has locus standi to challenge the Garnishee proceedings by way of an appeal arising out of the order in Garnishee proceedings in HCCS No.400 of 1995.

Whether the court can intervene in this matter where the garnishee was made absolute and money was paid by the garnishees to the respondents.

Counsel for the appellant submitted that Order 23 of the Civil Procedure Rules that governs the manner in which garnishee proceedings shall be conducted recognizes that such proceedings can only be brought by a decree holder, either before or after oral examination of the judgment debtor. This rule presupposes that the judgment debtor has a right to address Court on the correctness/propriety of the execution proceedings brought against him or her before or even after a Decree Nisi is entered on court record. Counsel contended that an Order Absolute arising out of garnishee proceedings is appealable by right as a decree and the appellant had a right to bring this present appeal by Notice of Motion as it is the practice when appealing from the orders of a Registrar.

In the alternative, Counsel submitted that Court has unlimited jurisdiction to make such orders as may be necessary for the ends of justice or to prevent the abuse of court process; and there is no greater abuse of the process of court than the execution of a non-existent judgment and decree.

Counsel further submitted that the garnishee proceedings were irregular in as far as no judgment, decree or order of court sought to be enforced ever existed, and this rendered the garnishee proceedings null and void. Court is not barred by any law from inquiring into this matter simply because the respondents had been paid monies pursuant to the garnishee order absolute.

On the other hand, Counsel for the respondents submitted that the appellant had no locus standi as the proceedings against it were complete and a Garnishee Nisi issued by court made absolute. He relied on ***Mrs Patience Akon Etim Akpan Versus Honourable Commissioner for Lands and Housing & ors Suit No.HU/MISC/86 2010*** where it was held that it is the Garnishee to show cause why the Garnishee order Nisi should not be made absolute. The judgment debtor has no

locus to apply to dismiss the garnishee order for the judgment debtor is not a party to the Garnishee proceedings. It was the further submission of Counsel that garnishee proceedings are only meant to examine the Garnishee banks as to whether they have sufficient monies to satisfy the Court order and this was done. The appellant had no locus to apply to dismiss the Garnishee order because it was not a party to the Garnishee proceedings.

Counsel further submitted that the appeal is overtaken by events and there is no execution to stay since the status quo of the attached accounts had changed.

Counsel for the 1st Garnishee submitted that the liability of the 1st Garnishee ended when it remitted the sums of money to the respondents' lawyers by complying with the said Court orders. Consequently, the garnishee proceedings were terminated with the Garnishee order absolute, and that this appeal is in vain and it has been overtaken by events in as far as the execution process was completed.

I agree with the submission of Counsel for the respondent that garnishee proceedings are separate proceedings between the judgment creditor and the Garnishee, regardless of the fact that the judgment debtor may be examined before or after the making of an order for attachment of debts. I consider the authority of ***Mrs Patience Akon Etim Akpan Versus Honourable Commissioner for Lands and Housing & ors Suit No.HU/MISC 86/ 2010,*** persuasive in this regard**.** It was stated;

> ***"The next issue I shall dwell on is the question of the locus of the applicant in bringing this application. The application is presented to the court by the judgment debtors. The immediate question to ask is if they have sufficient locus to present the application. It has been held that a garnishee proceeding is basically between the judgment creditor and the garnishee…the garnishee was the one required to show cause why the order nisi should not be made absolute. For the judgment debtors to present the instant application to this court thus portrays them as mere busy bodies seeking to truncate and frustrate the conduct of the garnishee proceedings. The applicants would thus have no locus to apply for an order dismissing the said garnishee proceedings for lack of jurisdiction. The simple reason for this is that the judgment debtors are not parties to this proceedings***."

Under ordinary circumstances I would not hesitate to hold that the appellant had no locus to lodge this appeal because it was not party to the garnishee proceedings. I have, however, taken

into consideration the fact that the garnishee proceedings were commenced without a proper judgment, decree or order of court.

The appeal is not only in respect of the appellant having not been heard in the garnishee proceedings. A serious matter of illegality has been brought to the court's attention whereby the Registrar proceeded to issue orders Nisi and absolute in a matter where there was no judgment or decree to base himself on. Once an illegality has been brought to court's attention, it cannot be overlooked. (See Makula International Ltd (Supra). It cannot be said to be a technicality referred to as under Article 126(2) (e) of the Constitution of the Republic of Uganda.

This court is duty bound to protect the sanctity of court actions. The garnishee proceedings were an illegality abinitio.

On grounds of illegality, I would set aside the execution/garnishee proceedings and orders there from; and I order for the refund of the monies illegally obtained thereby. The appellant shall take steps for such recovery.

The appeal therefore succeeds with costs to the appellant.

It is so ordered.

Elizabeth Musoke

JUDGE

29/09/2015