

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA; AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION No. 871 OF 2012**  
*(Arising from Civil Suit No. 426 of 2004)*

**UGANDA BUS OPERATIONS**  
**ASSOCIATION INVESTMENT LIMITED.} ..... APPLICANT**

*VERSUS*

**1. KAMPALA CAPITAL CITY AUTHORITY }  
2. KOBIL UGANDA LIMITED } .....  
RESPONDENTS**

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

**RULING**

The Applicant herein has moved this Court seeking that, on just and equitable grounds, it be pleased to set aside the consent judgment entered in H.C.C.S. No. 426 of 2004 on the 13<sup>th</sup> Day of February 2006, and the execution that ensued there from; and further that following there from, this Court should issue a consequential order reinstating the Applicant as owner of the property comprised in LRV 2808, Folio 21, Plots 43–47 Nakivubo Road (herein the suit property) and thereby restore the position that was obtaining before the consent judgment which it impugns. It has also prayed Court to provide for costs of this application. The grounds on which the application is brought, which are further set out in the affidavit affirmed to by Hajji Asuman Junju in support of the application, are rather involved.

They are briefly that on the 5<sup>th</sup> September 2002, Kampala City Council (the predecessor in title to the 1<sup>st</sup> Respondent herein) granted the Applicant herein a sublease over the suit property. The Applicant herein subsequently executed a deed of assignment with the 2<sup>nd</sup> Respondent herein for the sublease of the suit property to the 2<sup>nd</sup> Respondent; which the 1<sup>st</sup> Respondent however, in

protest, rejected. The 2<sup>nd</sup> Respondent then lodged a caveat on the title to the suit property; following which, the 1<sup>st</sup> Respondent filed H.C.C.S. No. 426 of 2004 against the 2<sup>nd</sup> Respondent for cancellation of the assignment and removal of the caveat lodged by the 2<sup>nd</sup> Respondent.

The deponent further states that the Applicant was joined as a party to the suit without its consent or a Court order; and that the 2<sup>nd</sup> Respondent filed H.C.C.S. No. 616 of 2005 against the Applicant, which was settled in a consent judgment dated the 30<sup>th</sup> December 2005, by which the 2<sup>nd</sup> Respondent was paid and the deed of assignment was cancelled. However the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, purportedly with the Applicant herein, entered a consent judgment on the 13<sup>th</sup> February 2006 and a decree was extracted there from; which the Applicant contends was unlawfully made, and is tainted with irregularities as, in the absence of a Court order joining the Applicant as a party to the suit, the Applicant was not a party to H.C.C.S. No. 426 of 2004 at the time the consent judgment was entered in Court.

He states further still that the warrant of execution issued following the consent judgment it impugns was itself tainted with irregularities and illegalities as first, the 1<sup>st</sup> Respondent's claim against the 2<sup>nd</sup> Respondent in H.C.C.S. No. 426 of 2004 had been settled by the 2<sup>nd</sup> Respondent's withdrawal of the caveat on the title to the suit property. Second, the consent judgment in H.C.C.S. No. 616 of 2005 had settled the 2<sup>nd</sup> Respondent's claim on the suit property. Third, the impugned consent judgment delved into matters that had not been pleaded or been in dispute in H.C.C.S. No. 426 of 2004. Fourth, the impugned consent judgment did not provide for eviction of the Applicant from the suit property. Fifth, the purported execution of the decree from the consent judgment was done to the benefit of non-parties to the suit. Finally, it is not known who initiated the execution.

In an affidavit for the 1<sup>st</sup> Respondent, in reply to that of Hajji Asuman Junju's in support of the Application, Charles Ouma deponed that the Applicant is estopped from raising the matter herein which is *res judicata*, barred by law, irregular, misconceived, frivolous, vexatious, and is overtaken by events. He corroborated Hajji Asuman Junju's deposition on the sub-lease of the suit property to the Applicant by the 1<sup>st</sup> Respondent's predecessor in title; and that the Applicant assigned the sub-lease to the 2<sup>nd</sup> Respondent, but this was rejected by the 1<sup>st</sup> Respondent, upon which the 2<sup>nd</sup> Respondent lodged a caveat on the title to the suit land, and following which the 1<sup>st</sup> Respondent filed H.C.C.S. No. 426 of 2004 against the 2<sup>nd</sup> Respondent for cancellation of the Deed of Assignment and, as well, vacating of the caveat.

He deponed further that the consent judgment entered into the parties hereto, and dated the 13<sup>th</sup> February 2006, which the Applicant now impugns, was entered into freely and with the full consent of the Applicant, 1<sup>st</sup> Respondent, and the 2<sup>nd</sup> Respondent; and that this consent judgment conclusively determined that H.C.C.S. No. 426 of 2004. He deponed further that the consent judgment has been fully executed and the beneficiaries named in the consent judgment or those claiming under them have in fact already fully developed the suit land; and that, in any case, the sub-lease of the suit land to the Applicant lapsed way back in 2007, and has not been renewed, hence it is impossible to return the Applicant to the position he was in before the execution of the consent judgment in H.C.C.S. 426 of 2004.

The 2<sup>nd</sup> Respondent's reply to the affidavit sworn by Hajji Asumani Junju, in support of the application, was through the affidavit of Andrew Kibaya of M/s Shonubi, Musoke & Co. Advocates, who deponed that he was the desk officer in the said law firm who, at all the material times herein, handled the transactions regarding the suit property for the 2<sup>nd</sup> Respondent. He rebutted the claims in the affidavit of Hajji Asumani Junju as containing inaccuracies, were incorrect, misleading, and a distortion of the facts; and also contended that this application is frivolous, vexatious, barred by the doctrine of res judicata, was overtaken by events, unenforceable, illegal, and offending the provisions of applicable law.

He disputed the authenticity of the annexures to paragraphs 2, 3, and 4 of Hajji Asumani Junju's affidavit in support of the application; and contended that the Applicant defaulted, failed, neglected, and or refused to honour its obligation to the 2<sup>nd</sup> Respondent under the contract, for which the 2<sup>nd</sup> Respondent sued it vide H.C.C.S. No. 616 of 2005, which the parties thereto however settled by a consent judgment dated the 22<sup>nd</sup> December 2005, providing, inter alia, for vacating the caveat lodged on the suit property. He deponed that the terms of that consent judgment (*annexture 'A'* to his affidavit), which has never been impeached, challenged, or set aside, anticipated '*disposal of the Applicant's property to the Applicant's development partners approved by the Kampala City Council*' which was the sub-lessor of the suit property named therein.

He attached to his affidavit, annexures 'B' and 'C' which are copies of pleadings showing that the 1<sup>st</sup> Respondent's predecessor in title (Kampala City Council) did sue the Applicant and 2<sup>nd</sup> Respondent vide H.C.C.S. No. 426 of 2004; and deponed further that from the Court record he had established that prior to the execution of the consent judgment, the Applicant had submitted to the jurisdiction of Court and was represented in Court on numerous times; hence was, at all

the material times, a party to the suit. He deponed further that the parties had, through their authorised officers, shareholders, lawyers, and advisors duly executed a valid and enforceable consent judgment on the 10<sup>th</sup> February 2006 (a copy whereof is annexure 'D' to his affidavit); and this was enforced as per the terms agreed upon.

He deponed further that the consent judgment has not been challenged in Court, and the property has since been redeveloped by the applicant's nominees named in the consent judgment. He deponed further that, in any case, the sub-lease of the suit land to the Applicant lapsed in 2007; and was never renewed. He contended that, therefore, Court cannot reinstate the Applicant to the position obtaining prior to the execution of the warrant; and that the matters raised in this application had been raised in Misc. Application No. 631 of 2006, arising out of H.C.C.S. No. 426 of 2004, wherein the Applicant had in fact made depositions and submissions which were in support of and recognized its recognition of the validity of the consent judgment in H.C.C.S. No. 426 of 2004; which it now impugns.

He attached, as annexure 'E' to his affidavit, a copy of an affidavit sworn in Misc. Application No. 631 of 2006 by Counsel Alan Shonubi, who had personal conduct of the head-suit therein, in which Counsel had deponed that the parties thereto (which included the parties herein) had, with the prior knowledge of the Applicant herein, agreed in Court to add the Applicant herein as a party to that suit with the approval of the trial Judge, following which Counsel Didas Nkurunziza of M/s Mulenga & Kalemera Co. Advocates filed the written statement of defence therein for the Applicant herein; and that on the 8<sup>th</sup> July 2005, 13<sup>th</sup> September 2005, and 27<sup>th</sup> September 2005, Justice Kagaba recognized the Applicant herein as a party to the suit; and it was after this that the parties entered the now impugned consent judgment.

Hajji Asuman Junju made depositions in rejoinder to the two affidavits sworn in reply to his he had affirmed in support of the application. He admitted the deposition for the 1<sup>st</sup> Respondent that the Applicant herein, who had been sub-leased the suit property by the 1<sup>st</sup> Respondent herein, had executed a deed of assignment with the 2<sup>nd</sup> Respondent herein which sub-leased the suit property to the 2<sup>nd</sup> Respondent herein; but that this assignment was rejected by the 1<sup>st</sup> Respondent herein who instituted H.C.C.S No. 426 of 2004 for its cancellation. He however reiterated his earlier contention that the consent judgment entered into in H.C.C.S. No. 426 of 2004 was irregular and illegal as the Applicant was not lawfully made a party to that suit in which the consent judgment was made.

He also deponed that the lease to the Applicant was extended to full term (annexture 'R1' to his affidavit), but erroneously named third parties as the lessees; and that a Committee of Inquiry into this matter of Baganda Bus Park, set up by the Minister of Lands, Housing, and Urban Development, recommended that the sub-lease of the suit land to the Applicant herein is still good and the Applicant should be given a full lease so as to sub-lease the same to existing developers. In response to the affidavit sworn for the 2<sup>nd</sup> Respondent, Hajji Asuman Junju relied on the Memorandum of Understanding executed by the Applicant, John Sebalamu, and John Bosco Muwonge, and provided for certain payments to be made to the 2<sup>nd</sup> Respondent herein.

He contended that because the consent judgment which the Applicant now impugns was entered on the same date with the Memorandum of Understanding providing for certain payments to be made to the 2<sup>nd</sup> Respondent herein, the consent judgment was tainted with illegalities as the 2<sup>nd</sup> Respondent's claim had been settled. He conceded that the consent judgment provided for the disposal of some of the property leased to the Applicant by the 1<sup>st</sup> Respondent, to raise sums of money required to pay the 2<sup>nd</sup> Respondent as shown by annexures X1 and X2 of this affidavit in rejoinder; but contended that his eviction from the suit property was wrong as the consent judgment did not provide for the eviction of anyone from the suit land.

He reiterated his contesting of the lawfulness of the amendment of the plaint in H.C.C.S. No. 426 of 2004, and the inclusion of the Applicant in the consent judgment as a party to the suit. He also deponed that the developments carried out on the suit property by the persons named in the Memorandum of Understanding referred hereto above were illegal; and so, the Court should not condone it. After the close of the affidavit evidence summarized above, the Counsels for each of the parties, as directed by Court, addressed Court by way of their respective written submissions, replete with very helpful authorities; and in them, proposed the following issues for Court's determination, which I do approve of, and are; namely: –

1. Whether the consent judgment in H.C.C.S. No. 426 of 2004 should be set aside.
2. Whether the execution of the consent judgment in H.C.C.S. No. 426 of 2004 should be set aside.
3. What are the remedies available to the parties?

**Issue No. 1:            Whether the consent judgment in H.C.C.S. No. 426 of 2004 should be set aside.**

The Applicant herein vehemently contends that it executed the consent judgment entered into in H.C.C.S. No. 426 of 2004 as the 2<sup>nd</sup> Defendant, but after it had irregularly and unlawfully been joined as a party to the suit; which the Respondents however dispute. Hence, this issue turns on the manner by which the Applicant herein was joined as a party to the suit; and what legal effect it would have on the consent judgment it later executed. O.1, r.10 (2) of the Civil Procedure Rules, paraphrased, provides that at any stage of the proceedings, the Court may, either of its own volition, or at the instance of a party to the suit, order that the name of any person who ought to have been a party to the suit, or whose presence before the Court may be necessary for the Court to effectively and completely adjudicate upon and settle all questions involved in the suit, be added to the suit.

This provision caters for two situations; one, where a party to a suit has a cause of action against the person sought to be added as a party to the suit; and the other, where the presence of the person sought to be added to the suit is necessary to enable Court effectively and conclusively adjudicate upon and settle the matter before it. Under this rule the Court has the discretion to order for such joinder of a person, or appearance before it, even on its own volition. When the order of joinder sought is dictated by the need for the presence of the person to be added so as to enable Court effectively and conclusively adjudicate upon and settle the matter in contention before it, there is no need for the party seeking the joinder to have a cause of action against the person intended to be added (see: *Deported Asians Property Custodian Board vs. Jaffer Brothers Ltd.; SCCA No. 1 of 1998, [1999] KALR 477*).

The Applicant herein has produced evidence (annexture 'K' to the affidavit in support of the application) of a consent order in Misc. Application No. 953 of 2004 for joinder of the Applicant herein, filed in Court, and the fee for it paid on the 30<sup>th</sup> November 2006. This means that there then could not have been any order of joinder of the Applicant herein as a party to H.C.C.S. No. 426 of 2004 prior to the date of consent judgment therein which preceded the consent order of joinder. Counsel for the Applicant has sought to make much capital out of this. However the affidavit which Alan Shonubi, as Counsel for the 2<sup>nd</sup> Respondent herein in H.C.C.S. No. 426 of 2004, had deponed in Misc. Application No. 631 of 2006, which arose from H.C.C.S. No. 426 of 2004, that the Applicant herein was joined to the head-suit with the authority of Court, was also put in evidence; but was not rebutted.

The contention by the Applicant herein that there could not have been any order for its joinder as a party to H.C.C.S. No. 426 of 2004, is quite sound. Because of the contention between the parties to this application before me, in addition to the affidavit evidence adduced by either side, I caused the Court file for H.C.C.S. No. 426 of 2004, as well as the files for the other suits or applications referred to in the various affidavits sworn herein to be retrieved from the archives, where they have since been stored, and placed before me. I should point out that the filing of documents therein leaves quite a lot to be desired, as it has lamentably been poorly done; and the record is scanty. Documents for different suits/applications altogether were also filed therein.

Fortunately I found, contained therein, the file for Misc. Application No. 953 of 2004, for joinder of the Applicant herein; in which M/s Sendege, Senyondo & Co. Advocates, as Counsels for the 1<sup>st</sup> Respondent herein, had sought Court orders joining and adding the Applicant herein as 2<sup>nd</sup> Defendant in H.C.C.S. No. 426 of 2004. This application was however not endorsed by the Registrar. Thus, it stopped at the stage of filing; and appeared to have been abandoned. Upon close examination, it is evident that the date of the consent order for the joinder was altered by a hand written note which changed the figure 4 in the year 2004 to 7; and thus changing the year to 2007. This is quite apparent even from the photocopy which is annexure 'K' to the affidavit in support of this application before me.

Owing to this, it would be inappropriate to consider that consent order for joinder in isolation, or against the affidavit testimony of Counsel Alan Shonubi alone. I need to examine the entire process or series of processes surrounding the joinder of the Applicant as a party to the suit, and the execution of the consent judgment with and by the Applicant as the 2<sup>nd</sup> Defendant in the suit. In the file for H.C.C.S. No. 426 of 2004, there is an amended plaint wherein the Applicant herein is the 2<sup>nd</sup> Defendant. It is shown therein that on the 10<sup>th</sup> December 2004, Court issued summons to the Applicant herein to file its defence; and this was duly filed for the Applicant herein by M/s Mulenga & Kalemera Advocates, on the 22<sup>nd</sup> December 2004.

Also enclosed in that file, and arising from it, is a file for Misc. Application No. 1105 of 2004, filed on the 22<sup>nd</sup> December 2004 by M/s Nangumya, Muhumuza & Co. Advocates, whereby the 2<sup>nd</sup> Respondent herein and the Applicant herein, as Defendants in H.C.C.S. No. 426 of 2004, sought a Court injunction restraining the 1<sup>st</sup> Respondent herein from terminating its sub-lease of the suit property to the Applicant herein; and order which the Court Registrar granted in the interim vide Misc. Application No. 1106 of 2004 and thereby securing the Applicant's interest in the suit property. There is also on record Misc. Application No. 139 of 2005, arising from

H.C.C.S. No. 426 of 2004, filed on the 17<sup>th</sup> February 2005 by M/s Shonubi, Musoke & Co. Advocates for the 2<sup>nd</sup> Respondent herein, seeking a Court order restraining the Applicant herein, named as the 2<sup>nd</sup> Respondent therein, from transferring or assigning any of its shares.

All these preceded the consent judgment executed by the parties to H.C.C.S. No. 426 of 2004 on the 16<sup>th</sup> February 2006; in fact a whole year after the Applicant herein had already, by filing its written statement of defence to H.C.C.S. No. 426 of 2004, and later applying for an order of injunction against the 1<sup>st</sup> Respondent herein, submitted itself to the jurisdiction of Court as the 2<sup>nd</sup> Defendant in H.C.C.S. No. 426 of 2004. Most notably, Didas Nkurunziza who was Counsel for the Applicant herein in H.C.C.S. No. 426 of 2004, and is still in active practice, has not been caused to rebut the deposition by Alan Shonubi that Kagaba J., on a number of occasions at the hearing of the suit, duly recognized the Applicant herein as a party to the suit.

From all this, the irresistible inference is that the joinder consented to by the initial parties to the suit was, in fact, sanctioned by Court; and this was to the direct benefit of the Applicant herein, as his stake in the suit property was under threat from the suit by which the 1<sup>st</sup> Respondent herein had challenged the assignment of the suit property by the Applicant herein to the 2<sup>nd</sup> Respondent herein. This lends credence to Alan Shonubi's deposition in that regard. Hence, it is quite possible, if not probable, that the consent order which bears the typed year of 2004, but has been altered by handwriting to 2007, was in fact prepared in 2004 but was not executed when the formal application in Court was abandoned; and was later filed simply to reflect the record on the joinder of the Applicant herein by consent; akin to extraction of a decree out of a judgment.

The Applicant claims that there was collusion in reaching the consent judgment. However, considered against the backdrop of the processes wherein the Applicant is consistently named as the 2<sup>nd</sup> Defendant/Respondent, it is rather difficult to discern the alleged collusion, unless the Applicant's Counsel Didas Nkurunziza then of Mulenga, Karemera & Co. Advocates was being accused of fraud; which however is not the case. Second, it is clear from the consent judgment entered into on the 22<sup>nd</sup> of December 2005 in H.C.C.S. No. 616 of 2004 (Commercial Division) (annexture 'G' to the affidavit in support of the instant application) that the 2<sup>nd</sup> Respondent herein, who had sued the Applicant herein in that suit, relinquished its interest in the suit property to enable the Applicant herein dispose of some of this property with the approval of the 1<sup>st</sup> Respondent herein.



It therefore comes as no surprise that it is expressly stipulated in the consent judgment in H.C.C.S. No. 426 of 2004 that its purpose was *‘to finally and effectually resolve and settle all wrangles pertaining to the suit land and facilitate the development of the suit land in a smooth, harmonious and coordinated manner without much delay so as to serve the need of the public’*, Further, the consent judgment itself shows that prior to the Applicant entering into it on the 13<sup>th</sup> February 2006, the directors of the Applicant herein had on the 31<sup>st</sup> December 2005, by a resolution duly registered with the Registrar of Companies (and attached to the consent judgment), authorized the Applicant herein *‘to enter into and execute this consent judgment ...’*; and further to this, all the directors of the Applicant herein then, most notably including Asuman Jjunju the deponent to the affidavit in support of the instant application, duly signed/endorsed the consent judgment.

Therefore, in the absence of any allegation that the directors of the Applicant herein were compromised to act as they did, I find it a little difficult to understand the contention that there was some collusion between the parties in reaching the consent judgment which, in any case, mainly benefitted the Applicant herein whose sub-lease of the suit land to the 2<sup>nd</sup> Respondent herein had been threatened with termination by the 1<sup>st</sup> Respondent herein through the suit. Therefore it makes no sense to claim, as is the import here, that the Applicant’s directors colluded against their own Company (the Applicant therein) when they endorsed a consent judgment whose purpose, as is discernible from the various provisions therein, was to conclusively resolve all matters in dispute between the parties to the suit.

If indeed the decree from the consent judgment was wrongly executed, as the Applicant herein contends, it would entitle the Applicant to certain remedies; but such execution would not vitiate the joinder of the Applicant herein to H.C.C.S. No. 426 of 2004; and following which, without any protest whatever, it filed its written statements of defence to the suit, filed an application for an order of injunction against the 1<sup>st</sup> Respondent herein and thereby secured its interest in the suit property; and then finally, long after it was joined to the suit, it entered into the consent judgment with the prior consent of its board of directors followed by all the directors expressly approbating the same by signing it; which all signified the Applicant’s acceptance that it was duly joined as a party to the suit.

By reason of all this, the Applicant herein is estopped from turning round now to impugn the manner it was joined as a party to the suit and the resultant consent judgment there from. Hence I decline to set aside the consent judgment herein. I find comfort in the decision of the Court of

Appeal for Eastern Africa in the case of ***Ismail Sunderji Hirani vs. Noorali Esmail Kassam (1952)1 E.A.C.A. 131***, where Sir Newnham Worley (V-P), who delivered the ruling of the Court, stated at p.134, quoting ‘**Seton on Judgments and Orders**’ (7<sup>th</sup> Edition), Vol. 1, page 124, on when Court may interfere with a consent judgment, as follows:

*“Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them ... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court ...; or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the Court to set aside an agreement.”*

I am also emboldened to subscribe to this proposition of the law which was recast by Mulenga JSC, in his authoritative lead judgment in the case of ***Attorney General & Uganda Land Commission vs. James Mark Kamoga & James Kamala – SCCA No.8 of 2004***, as follows: –

*“It is a well settled principle therefore, that a consent decree has to be upheld unless it is vitiated by a reason that would enable a Court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of Court policy. The principle is on the premise that a consent decree is passed on terms of a new contract between the parties to the consent judgment.”*

In the case before me, the parties to H.C.C.S. No. 426 of 2004 went to great pains to ensure that the Applicant herein acted with the due authority and open-eyed participation of all its directors in reaching the consent judgment. The Applicant herein even protected its central interest in the suit by assigning its proprietary interest in the suit property to its nominees named in the consent judgment, pursuant to its earlier consent with the 2<sup>nd</sup> Respondent herein in H.C.C.S. No. 616 of 2004 that its interest in the suit property would be assigned to other parties with the consent of the 1<sup>st</sup> Respondent herein; and which saved it from the threatened revocation of the sub-lease of the suit property to it, by the 1<sup>st</sup> Respondent.

There was clearly no instance of fraud, mistake, misapprehension or contravention of Court policy, in the entire process. The Applicant herein, which fully participated in the process leading to the consent judgment which was primarily and largely to its benefit, as it saved the sub-lease of the suit property to it from revocation by the 1<sup>st</sup> Respondent, and ensured the full participation of all of its directors in the executing the consent judgment, certainly could not by

any stretch of imagination be accused of having colluded with the other parties to the suit, against itself, in reaching the consent judgment. Accordingly, I must resolve this issue in the negative.

**Issue No. 2:            Whether the execution of the consent judgment in H.C.C.S. No. 426 of 2004 should be set aside.**

The Applicant's grievance is that it was wrongfully evicted from the suit property on the strength of a warrant of execution of the consent judgment in H.C.C.S. No. 426 of 2004 which, even if the consent judgment were upheld, however did not provide for the eviction of any of the parties to the suit. On this issue, I should point out at the very outset that I can think of two situations that would attract Court's intervention against an execution of a Court decree; either by staying it, or by setting it aside even when it has been fully satisfied. One is, under the summary procedure under r.11 of 0.36, of the Civil Procedure Rules, where Court may set aside its decree and if need be even the execution of that decree, if there was ineffective service of summons of the Court, or for any other good cause.

This provision is a stringent regulation of the process by which a party can proceed ex parte in Court; and accords with the natural justice rule against condemning a party without affording such a party the opportunity to be heard. Second, is where a warrant of execution is in non-conformity with the Court decree it purports to execute; for which then it is not founded on a Court decree, and is therefore an illegal process. While for the warrant founded on a valid decree of the Court, though the decree is later set aside, the Court has to exercise its discretion on whether or not to set aside the execution as well, the execution carried out under the warrant in the second circumstance, notwithstanding that the warrant was issued by Court, is void as it is an unlawful process; and must be set aside.

In the instant case before me, the warrant of execution that the Registrar of Court issued to the Court bailiff on the 17<sup>th</sup> February 2006, following the consent judgment and extraction of a decree there from, was headed: ***'WARRANT TO THE BAILIFF TO GIVE VACANT POSSESSION OF LAND BY EVICTION AND DEMOLISHING STRUCTURES ON THE LAND'***. The relevant part of the warrant is as follows: –

*‘Whereas the under mentioned property, in the occupancy of Kampala City Council and its sub lessee **Uganda Bus Operations Association Investments Limited**, has been decreed to **Mr. John Sebalamu, Mr. John Bosco Muwonge, Ms. Christine Nabukeera, Mr. Francis Drake Lubega and Mr. Tom Smith Semuwemba**, you are hereby directed to evict Kampala City Council and its sub – lessee UBOA Ltd, and put the said **Mr. John Sebalamu, Mr. John Bosco Muwonge, Ms. Christine Nabukeera, Mr. Francis Drake Lubega and Mr. Tom Smith Semuwemba** in possession of the same, and you are hereby authorised to demolish illegal structures extending on their land.’*

However, Clauses 5 and 11 of the consent judgment, which was correctly reflected in the decree extracted there from, had, in no unmistakable language, provided that: –

“5. *In order to finally and effectually resolve and settle all wrangles pertaining to the suit land and facilitate the development of the suit land in a smooth, harmonious and coordinated manner without much delay so as to serve the needs of the public, the plaintiff shall subject to the other terms and conditions herein consent to the assignments and transfer of the entire interest of Uganda Bus Operations Association Investments Limited in the suit land to the following parties some of whom have already embarked on the development of part of the the suit land under arrangements made between them and Uganda Bus Operations Association Investmants Limited: –*

*Name of Assignee*

- (i) Mr. John Sebalamu                      (ii) Mr. John Bosco Muwonge*
- (iii) Ms. Christine Nabukeera      (iv) Mr. Francis Drake Lubega*
- (v) Tom Smith Semuwemba.*

11. *Subject to the above terms, the existing sub–lease between the plaintiff and Uganda Bus Operations Association Investments Limited shall, with appropriate modifications, particularly the assignment of the suit land to the several new assignees named in Clause 4 (sic) above, continue in force without interruption for the remaining period of the term stipulated therein and be extended to a full term upon the satisfactory compliance and observance of the development covenant subject to all the terms and conditions required to e observed by Uganda Bus Operations Association Investments Limited/its assignees in the sub–lease.”*

Nowhere, at all, is it stipulated in the consent judgment that any of the parties to the suit should be evicted from the suit property. To the contrary, it is the very converse which holds true; namely that the express agreement was that the Applicant herein or its named assignees were to enjoy quiet possession until the expiry of the initial sub-lease period; and, subject to their satisfactory compliance with the covenants therein, the sub-lease was to be extended to full term. These stipulations were duly reflected in the decree extracted from the consent judgment. The provision, in the warrant, that the Applicant herein and the 1<sup>st</sup> Respondent be evicted from the suit property was in utter non-compliance with that decree. This was most outrageous.

Court Registrars have the bounden duty to ensure that a warrant issued for execution reflects the clear letter and purpose of the decree, which itself must strictly embody the decision of the Court as is contained in its judgment in the suit. Since this warrant was issued in contravention of the Court decree which it purported to execute, the Applicant's grievance in this regard is well founded. I find as a fact that the execution complained against was unlawful, as it emanated from a warrant that was wrongfully issued contrary to the decree of the Court; and for which I set aside the execution, hence resolving this issue in the affirmative.

**Issue No. 3: What are the remedies available to the parties?**

Setting aside the execution, as I have done, resolves only part of the issue at hand. The Applicant's plea is also that upon setting aside the execution of the decree, Court should then make a consequential order that would put it (the Applicant) back in physical possession of the suit property as it was before it was evicted there from. In order to decide whether to go that far, or not, I have to consider the import and consequence of issuing that consequential order. The contract the parties to the suit agreed on in the consent judgment was, in part, an inchoate one as the Clauses therein expressly made provisions for the performance, at a future time, of such obligations as the payment of consent fee by the Applicant herein, to the 1<sup>st</sup> Respondent herein, for its assignment of the suit property to its named assignees.

Further, Clause 11 of the consent judgment, reproduced above, stipulated that the extension of the term of the sub-lease to full term for the benefit of the Applicant herein or its named assignees, was contingent upon the Applicant herein or its assignees' satisfactory compliance with and observance of the development covenants, and subject to all the terms and conditions in the sub-lease, required to be observed by the Applicant herein or its assignees. The evidence

before me shows that the initial five year period of the sub-lease in issue, which commenced on the 5<sup>th</sup> August 2000 (see Clause 1.14 of the sub-lease agreement *annexture 'A'* to the affidavit in support of the application herein), was to expire on the 4<sup>th</sup> August 2005.

The Applicant's own evidence is that Kampala District Land Board (the head-lessor of the suit property) granted consent to the 1<sup>st</sup> Respondent herein to extend the sub-lease of the suit land to John Sebalamu, John Bosco Muwonge, Christine Nabukeera, Francis Drake Lubega, and Manisul Matovu, to a full term of 49 years. Apart from Manisul Matovu, all these beneficiaries were named in the consent judgment as assignees of the Applicant herein. In fact, as evidenced in the encumbrance page of the certificate of title to the suit land (*annexture 'C'* to the Applicant's affidavit in support of the application), the assignment of the entire interest of the Applicant herein in the suit property was, under order in H.C.C.S. No. 426 of 2004, on the 10<sup>th</sup> of February 2006, entered on the certificate of title.

Therefore, I do not understand why the Applicant should cry foul when the sub-lease was extended to full term to the benefit of its assignees; and was in compliance with the terms of the agreement in the consent judgment, which itself was in keeping with the earlier consent judgment between the Applicant herein and the 2<sup>nd</sup> Respondent herein in H.C.C.S. No. 616 of 2004 which provided for assignment of property of the Applicant herein. It is important to note that nowhere has it been either alleged, or shown, that the extension of the lease to full term was pursuant to or arose from the purported execution of the decree. The warrant of execution did not, at all, oblige the 1<sup>st</sup> Respondent herein to extend the sub-lease to full term. It only wrongfully directed that the Applicant herein be evicted and its named assignees be put in possession of the suit property.

The provision for extension of the sub-lease to full term, either to the Applicant or the named assignees, was in the consent judgment and the decree extracted from it which however the warrant of execution never conformed to. Accordingly, then, the extension of the sub-lease to full term had no linkage whatever to the warrant of execution on the authority of which the Applicant herein was evicted from the suit property. Second, since the assignees were named in the consent judgment contract as nominees of the Applicant herein, for some consideration, it would be wrong for Court to issue any order that would affect their rights and interests in the suit property when they have not either been joined as parties to this application or sued in a fresh suit to enable them put their case before Court.

Third, even if the parties to whom the 2<sup>nd</sup> Respondent has granted a full term sub-lease of the suit land were not nominees of the Applicant herein, the extension of the sub-lease to full term, for which consent was granted by the head-lessor in September 2007, took place after the expiry of the initial lease to the Applicant herein. There was therefore nothing to prevent the 1<sup>st</sup> Respondent herein from sub-leasing the suit property to any other person. This is the more so, given that the 2<sup>nd</sup> Respondent did not cause the wrongful eviction of the Applicant herein from the suit property; which if it were otherwise, the Applicant would justifiably contend that the 1<sup>st</sup> Respondent's action was the reason he failed to comply with the development covenants contained in the sub-lease and expressly reiterated in the consent judgment.

Fourth, it is noteworthy that the Applicant herein contends that it has no knowledge of whoever caused the Registrar to issue the warrant which, as is evident from the record, was aimed at evicting the Applicant and the 1<sup>st</sup> Respondent from the suit property; and resulted in the eviction of the Applicant from the physical possession of the suit premises. But even if the 1<sup>st</sup> Respondent were guilty of instigating the issuance of the warrant of execution, and the extension of the term of the sub-lease complained of was made by reason of this, the Applicant herein would still have had an uphill task convincing Court that it should be put back in the position it was in before the eviction. This is owing to its inexcusably inordinate delay to come to Court in search of the remedy it now belatedly seeks.

The Applicant took the whole of six years plus, to come to Court for a remedy against the wrongful eviction from the suit property it suffered, and the extension of the sub-lease of the suit property to full term, not to him, but to other persons. In that period, so much water must have passed under the bridge, as it were; with other adverse interests having set in over the suit property. The evidence in the Applicant's affidavit in support of the application (see the encumbrance page of annexure 'C' thereto) is that Court ordered in Misc. Application No. 96 of 2006, arising from H.C.C.S. No. 426 of 2004, that Horizon Coaches Ltd. which had lodged a caveat on the title to the suit property after the consent judgment in H.C.C.S. No. 426 of 2004, had no interest in the suit land.

The Applicant adduced evidence of a complaint lodged with the Minister of Lands, Housing, & Urban Development, sometime in the year 2010; and the Committee of Inquiry set up by the Minister made its report in January, 2011. First, that complaint was not lodged by the Applicant, but by the Managing Director of the very Horizon Coaches Ltd., who had earlier been ordered by Court as having no interest in the suit land. Second, and more important, where a party to a suit

or any other person is aggrieved by a decision of a Court of law, the proper procedure is for such person to challenge such decision of the Court either by way of an appeal or through the remedy of review of such decision, as provided for in the law.

Otherwise, I am not aware of any allotment of a place for the executive arm of government, within the hierarchical tier of the Ugandan Court system, for anyone who is dissatisfied with a decision of a Court of law to turn to the executive arm of government for redress. Any such pursuit is a most blatant violation of the principle of separation of powers so securely entrenched in our 1995 Constitution. Not surprisingly then, the administrative pursuit of a remedy in the instant case before me was to no avail. The Applicant herein was joined as a party to the suit, and had the benefit of legal representation by learned Counsel all the time. For it to sit back for these six years, before coming to Court for a remedy either against the joinder to the suit, or the extension of the sub-lease to other persons even if they were not his nominees, stretches to the utmost limit the Court's equitable exercise of discretion in rendering justice.

Second, the eviction of the Applicant from the suit property did not terminate the sub-lease. There was nothing preventing it from taking action to protect its interest in the suit property before the expiry of the lease, whether or not it had been evicted at the instance of the 1<sup>st</sup> Respondent. Court would have most probably made orders restraining the 1<sup>st</sup> Respondent from taking any further action that would affect the sub-lease proprietary rights of the Applicant in the suit property pending the determination of the Applicant's grievance. As it is, this belated action comes when any order by Court that the Applicant recovers possession would create more problems than that which it seeks to resolve. I am unable to issue the consequential order of restitution which is the core remedy sought by the Applicant herein.

Third, there was no point bringing this application against the 1<sup>st</sup> Respondent which could not have been behind the warrant of eviction, since it was itself also targeted in the warrant, alongside the Applicant herein, for eviction from the suit property. Similarly, the 2<sup>nd</sup> Respondent could not have instigated the eviction of the Applicant, since it had already resolved its dispute with the Applicant herein through the consent judgments in H.C.C.S. No. 616 of 2004, and H.C.C.S. No. 426 of 2004; followed by the Memorandum of Understanding between it and the Applicant herein. Eviction of the Applicant herein from the suit property, and instead putting the Applicant's assignees in possession, were not any of the agreed upon remedies. Accordingly, I dismiss this application with costs to the Respondents.



A handwritten signature in dark ink, appearing to read 'Alfonse Chigamoy Owiny - Dollo'. The signature is fluid and cursive, with a large initial 'A' and 'O'.

**Alfonse Chigamoy Owiny – Dollo**

**JUDGE**

**26 – 04 – 2013**