

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

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**MISC. APPLICATION NO. 519 OF 2004
(Out of HCCS No. 303 of 2004)**

VICTORIA FINANCE CO. LTD ::::::::::::::: PLAINTIFF/JUDGMENT CREDITOR

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VERSUS

WALUGEMBE ADIRISA ::::::::::::::: RESPONDENT/JUDGMENT DEBTOR

15

AND

JAMADA MUSISI ::::::::::::::: APPLICANT/OBJECTOR

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BEFORE : THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE

RULING

The application before court is for objector proceedings under Order 19 rules 55

25 and 57 of the Civil Procedure Rules. At the hearing Mr. Noah Mwesigwa holding
brief for Mrs. Deepa Jivram raised a preliminary objection which he argued would
dispose of the matter finally. He argued that property which was the subject
matter of the attachment namely motor vehicle Reg. No. UAE 901 J was sold on
the 6th August 2004 by Court Bailiffs M/s Orbit Property Agencies and that on the

7th September 2004, the said Court Bailiffs wrote a letter to the Deputy Registrar with the sale details.

The letter states that the bailiffs had on the 20th August 2004 received Shs. 5 7,500,000/= being the final proceeds of the auction and handed over the motor vehicle and the log book to the purchaser Mr. Juma Wazimbe. The decretal sum of Shs. 5,600,000/= was paid to the Judgment Creditor and Shs. 1,721,500 to M/s Twesigye & Co. advocates as their taxed costs (copies of the acknowledgements of payments were attached). The Bailiffs by their letter 10 requested the Deputy Registrar to tax his bill of costs, which were on court file so that the warrant could be returned fully executed.

Mr. Mwesigwa then argued that the provisions of Order 19 rule 55 do not apply where the property has been sold and there is therefore nothing to investigate. 15 In this regard he relied on the authority of Intraship (U) Ltd vrs G.M. Combined (U) Ltd, Fulgence Mungereza & Another HCCS No. 44/1993.

Ms Cherotich for the Applicant/Objector opposed the preliminary objection. She argued that no sale had taken place. She submitted that Annex "FF" to the 20 affidavit in reply (deponed by the Ag. General Manager of the Judgment Creditor Company Mr. Gordon Okello) shows that if there was any sale it was provisional and not absolute

I think it is instructive to reproduce this letter which is from one Mohmood 25 Rukyalekere, Court Bailiff t/a Orbit Property Agencies to the Deputy Registrar High Court of Uganda (Commercial Division) dated and filed on the 11th August 2004.

" Your Worship

HCCS No. 303 of 2004

Sale of Motor Vehicle No. UAE 901 J

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On the 25th June 2004, I received warrant of attachment from you in the above suit.

On the 19th July 2004 I executed the warrant by attaching Motor Vehicle No. UAE 901 J. I advertised the same on the 23^d July 2004.

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On the 5th August 2004, I wrote to you requiring approval of the valuation report, the date of sale fell on 6th August 2004. Although I had to sell off this vehicle by that time, I could not fully receive the full sale price, as I was not able to get the approved valuation in time. I however provisionally carried out the sale (see attached memorandum of sale).

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The purpose of this letter is to seek your guidance in this matter

Much obliged

Yours faithfully

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Mohmood Rukyalekere

Court Bailiffs

c.c. M/s Twesigye & Co. Advocates

"

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Ms Cherotich further argued that on the 13th August 2004 this matter came before the Hon. Justice Lugayizi who ordered that the motor vehicle in the Plaintiff/Judgment Creditors possession not to be sold until the final disposal of Misc. Application No. 519 of 2004.

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The court record shows that the hearing of the main application was fixed for the 18th August 2004. She further submitted that this was a judicial sale and a judicial sale unlike a private sale is not complete immediately it takes place as it can be set aside by court and if not only then that it is absolute. On this point 5 she relied upon **Lawrence Muwanga vrs Lawrence Kyeyune** CA No. 12 of 2001 (SC). She therefore submitted that no sale could have taken place in light of the court order.

I have read pleadings presented by the parties, perused the earlier court 10 proceedings and heard the submissions of both counsel. Clearly the preliminary objection made raises important questions of fact and law which need to be determined first. The nature of the preliminary objection necessitates some inquiry even at this stage of what has taken place.

15 From the court file it would appear that the main application which was fixed for hearing on the 18th August, 2004 before Justice E.S. Lugayizi did not take off. This is because according to a letter from M/s Nyanzi, Kiboneka & Mbabzi Advocates dated 23rd August 2004 to the Registrar of this court, the learned Judge declined to hear it and advised that the matter be heard by another 20 Judge. However, there is nothing on record to show that his earlier ruling of the 13th August 2004 had been varied. A further perusal of the court file also shows that through the court bailiffs M/s Orbit Agencies had by their letter dated 11th August 2004 notified the Deputy Registrar of a provisional sale of the vehicle and sought the Deputy Registrar's guidance (presumably with regard to his approval 25 of the valuation report) no guidance was endorsed on the said letter as is the practice in the court.

That notwithstanding as outlined earlier in this ruling M/s Orbit Agencies vide their letter dated 6th September 2004 went ahead to receive the final settlement

of the sale being Shs. 7,500,000/= and handover the motor vehicle and log book to the purchaser one Mr. Juma Wazimbe.

- He then paid the decretal sum of Shs. 5,600,000/= to the Plaintiff/Judgment Creditor in this matter and Shs. 1,721,500/= to M/s Twesigye & Co. Advocates as his costs. The firm of M/s Twesigye & Co. Advocates have of course ceased to have conduct of this matter. The bailiff has applied to the Registrar of this court to have his bill of costs taxed.
- 10 The court record shows that when this file came before the Hon. Justice Lugayizi on the 13th August 2004 the following were recorded as being present in court –
- i) Ms Terotich for the Applicant
 - ii) The applicant was in court
 - 15 iii) Mr. Twesigye for the Respondent
 - iv) The Respondent's representative in court

Both Ms Terotich for the Applicant and Mr. Twesigye for the respondent agreed to maintain the status quo (i.e. The motor vehicle was not to be sold). The 20 learned Trial Judge then ruled and I quote –

“ This matter is adjourned to 18/08/2004 for the purpose stated above. The motor vehicle in meantime, not be sold.”

25 Given what transpired in court on 13th August 2004 I am at a loss as to how the sale of the motor vehicle could have continued.

I agree with the observation made by His Lordship Justice J.W.N. Tsekooko (JSC) in Lawrence Muwanga vrs Lawrence Kyeyune CA No. 12 of 2001 –

"That a judicial sale, unlike a private one, is not complete immediately it takes place. It is liable to be set aside on appropriate proceedings. If no such proceedings are taken or if taken and are not successful, the sale will then be made absolute."

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In this case appropriate proceedings were taken and the status quo was ordered to be maintained namely that the motor vehicle not be sold. The Registrar of this court had even not given directions with regard to the valuation of the vehicle. In other words no sale had been authorised by court at the time it is alleged to have taken place. What took place therefore without any further explanation is nothing less than was the blantant abuse of court process in a manner that amounts to actual contempt of the court. This is not acceptable. It is simply amazing that both the Judgment Creditor and his counsel went ahead to receive the proceeds of this sale when they were both present when the Judge said no sale should take place.

I accordingly find that the alleged sale of motor vehicle was not just irregular but actually void ab initio. The case of Intraship vrs G.M. Combined (U) Ltd & F. Mungereza & Another HCCS No. 44/1993 is distinguished since there was no existing order stopping the sale in that case.

I find that the motor vehicle's sale had been postponed within the meaning of Order 55 rule 2 by way of an order preserving the status quo. I accordingly dismiss the preliminary objection with costs to the Applicant. The court shall now proceed to further investigate the claim under objection of the Applicant/Objector.



GEOFFREY KIRYABWIRE

30 **Ag. JUDGE**