

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(EXECUTION DIVISION)

CIVIL REFERENCE APPEAL No. 0327 OF 2014

*(Arising from EMA No. 0244 of 2014; arising out of Commercial Division Misc.
Application No. 35 of 2004; arising out of Commercial Division C.S. No. 126 of 2009)*

1. BONEY MWEBESA KATATUMBA }
2. HOTEL DIPLOMAT LIMITED } ::::::::::: APPLICANTS/JUDGMENT CREDITORS

VERSUS

1. SHUMUK SPRINGS DEVELOPMENT LTD.}}
2. SPRINGS INTERNATIONAL HOTEL LTD.}} ::::::::::: RESPONDENTS/JUDGMENT
DEBTORS

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

RULING

This appeal by way of reference has a chequered background; and so, it is imperative that I set out the events that have culminated into the appeal. The Applicants herein are the Plaintiffs in H.C.C.S. No. 126 of 2009 of the Commercial Division where in they have made certain adverse claims against the Defendants' (Respondents herein) proprietary interest in property comprised in LRV 131 Folio 1 Plot 2 Colville Street, Kampala (herein the suit property). Before the trial of the head suit had commenced, the Plaintiffs applied for and obtained an interlocutory order from the Registrar of the trial Court, vide *Misc. Application No. 35 of 2004*, for attachment of the suit property before judgment. The order, as it was extracted, I will advert to shortly.

Armed with the order in the form it was extracted, the Plaintiffs/Applicants' counsels then applied to the Registrar Execution Division; stating explicitly that the mode in which the assistance of

Court was required was *'By way of attachment of the Respondent's property before judgment viz the property comprised in former LRV 131 Folio 1 Plot 2 Colville Street'*. The learned Registrar of Execution, in his handwritten note, allowed the application; but however, most inexplicably, issued two discordant warrants, purportedly pursuant to the application for execution. The first warrant commanded the Bailiff of the Court to attach the suit property in execution before judgment.

The second warrant, which the Registrar evidently issued simultaneously with the first, commanded the same Bailiff to evict the Defendants/Respondents, their tenants, and anyone deriving authority from the Defendants/Respondents, from the suit property; and to give vacant possession to the Plaintiffs/Applicants. The Bailiff duly executed the two warrants; and there then followed a flurry of Court orders, counter orders, and as well administrative actions. This ping pong in Court decisions with the attendant alternating shifts in the possession of the suit property between the parties hereto have, I must confess, only served to distastefully expose the Courts of law as uncoordinated. This too, I will advert to shortly.

It is against this backdrop that the instant reference appeal before me has arisen. The appeal challenges the order by Her Worship Irene Akankwasa in *EMA No. 244 of 214*, by which the learned Registrar of the Execution Division set aside the order of execution by her predecessor Registrar, His Worship Henry Twinomuhwezi which, through the second warrant issued to the Court Bailiff, had caused the eviction of the Respondents herein from the suit premises. The reference appeal seeks to fault Her Worship Irene Akankwasa of having acted without jurisdiction, and therefore illegally, in setting aside her predecessor's order of execution; and so, the Appellants

contend, the learned Registrar's impugned action was an exercise of revisionary powers not vested in her.

The genesis of this matter lies in the interlocutory Misc. Application No. 35 of 2014 of the Commercial Division instituted by the Applicants herein by way of chamber summons, and with the sole relief sought being an order for *'attachment before judgment of immoveable comprised in former LRV 131 Folio 1 Plot 2 Colville Street belonging to the Applicants'*. The Applicants' Counsel, in his argument therein, pointed out to the learned Registrar of the Commercial Division, the Applicants' fear that the suit property was at the risk of being disposed of; with the consequence that any judgment that the Applicants as Plaintiffs in the head suit may get in their favour, would have been rendered nugatory. He therefore urged that the suit property be *'protected'* by granting the prayer sought.

The learned Registrar of the Commercial Division, in granting the relief sought, stated thus: *"I have no hesitation in granting this application as prayed, chiefly because of the need to preserve the subject matter of dispute in Civil Suit No. 126 of 2009."* However, the wordings of the order as extracted by Counsel for the Applicants, from this ruling, was as follows: *"The property comprised in former LRV 131 Folio 1 Plot 2 Colville Street be attached in execution before judgment in favour of the Applicants until the disposal of the main suit CS No. 126 of 2009"*. This extracted order was duly sealed by the same learned Registrar in that form; and it is this order that was presented to the Registrar Execution, and acted upon.

The Registrar Execution then issued the two orders - one for attachment of the suit property, and the other for giving vacant possession to the Applicants - as I have referred to herein above. I should like to be quite categorical that the remit of this application

does not extend to the efficacy of the order granted by the learned Registrar Commercial Division in his considered ruling. That is the purview of the trial Court upon an application properly brought before it for that purpose. Mine is limited to the issue of the execution that arose out of the order as presented in the Execution Division. In this regard - and this is quite evident from the extracts of the record I have reproduced herein above verbatim - the order as extracted, albeit that it was sealed by the issuing Registrar, was conspicuously at variance with the ruling of the Registrar.

Second, neither the ruling itself nor the order extracted provided for eviction of any person. The Registrar Execution should have exercised due diligence and meticulously perused the ruling from which the order was extracted and first satisfied himself that the order extracted there from was in strict conformity with the ruling before acting on it. The need for this cannot be overstressed. It is owing to the fact that it is what is embodied in the ruling of Court that must be reflected in the order extracted from it. Where, as here, the order extracted was manifestly in non compliance with the ruling of Court, the Registrar Execution ought to have declined to act on the order; and should instead have sent it back to the Registrar Commercial Division for appropriate correctional measures to be taken thereon.

Similarly, it was outrageous for the learned Registrar Execution to issue an order for eviction of the Respondents when neither the ruling, nor the impugned order extracted there from provided for such a relief. However, the complaint before me is that even if this was so, the subsequent order by the successor Registrar Execution setting aside this order of eviction was itself unlawful as she had no jurisdiction to do so. I think the learned Registrar against whom the instant complaint is brought must have been torn between the

provisions of the law in the Civil Procedure Act and the Civil Procedure Rules whether a warrant issued for execution is an order.

Section 2 of the Civil Procedure Act would seem to suggest that a warrant issued to the Bailiff for execution is not an order but rather an administrative action pursuant to the decree or order already made and embodied in a decree or order sought to be executed. This is because the Registrar Execution neither makes a judgment or ruling in the issuance of the warrant; but merely gives effect to the earlier decree or order made. However it is quite clear, from the very explicit provisions of 0. 50 rr. 4 and 6 of the CPR, that in the exercise of execution the Registrar sits as a civil Court, and that the directives for attachment and sale of property and for notices to show cause for arrest and imprisonment in execution of a decree of the High Court are in fact formal orders.

If this be so then, on the authority of *Attorney General & Uganda Land Commission vs James Mark Kamoga & Anor; SCCA No. 8 of 2004*, it would seem that the learned Registrar had no power to set aside the order made by her predecessor. In any case, this had already become a contested matter; and it would seem the proper course of action open to her was to invoke the provisions of section 34 of the Civil Procedure Act, and 0. 50 r. 7 of the CPR which both mandate the judge of the High court to investigate any contentious matter regarding execution and make a finding thereon. I would therefore find that in this regard, the grievance by the Applicants is well founded; and so, I do set her order aside.

However, this appeal triggers the provision of 0. 50 r. 8 of the CPR which then comes into play. Accordingly then, this Court will exercise its mandate under the provisions of the law cited above. I have already pointed out herein above that the order of the Registrar

Commercial Court as it was extracted was in non-conformity with the ruling of that Registrar; and similarly that the Registrar made no order at all for the eviction of anyone, leave alone the Respondents. It follows from this that the eviction order issued by His Worship Henry Twinomuwhezi in his warrant to the Court Bailiff had no basis whatever; and as such it was illegal. I should like to re-echo here what I stated in the case of *Uganda Bus Operations Association Investment Ltd. vs Kampala Capital City Authority & Anor.; Land Division Misc. Application No. 871 of 2012* (as yet not reported) which has similarities with the instant matter before me: -

“The provision, in the warrant, that the Applicant herein and the 1st 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.”

In the instant case before me the ruling of the Registrar Commercial Division was amply clear; it ordered for the attachment of the suit property before judgment to preserve it. Since Court orders are in themselves registrable instruments on the certificates of title, all that the Applicants’ counsel needed to do was to register this order on the Registry title to the suit property and it would have served as a powerful encumbrance against any subsequent dealing in the suit

property by any person before judgment as was desired by the Applicants; and so ordered by Court as an interim relief. Accordingly I allow this application; but I also set aside the order of eviction issued by His Worship Henry Twinomuwhezi for being illegal.

I take cognizance of the fact that the unfortunate events that have characterized this matter, culminating in this appeal, trace back to the actions of the Applicants and their counsels. First, the extracted order is in non-compliance with what is contained in the ruling by the Registrar Commercial Division. Second, the application for eviction of the Respondents was not founded on any order contained in the ruling by that Registrar; and yet it is this that has brought about the saga I have berated herein. Thus, it would be unfair for the Applicants to benefit from a wrong that was of their making; and so they are condemned to pay the costs of this application. In the result, I make the following orders and directives: -

- (i) The order of eviction of the Respondents issued by the Registrar Execution is hereby set aside.
- (ii) The order by Her Worship Irene Akankwasa setting aside the order of her predecessor Registrar is also set aside.
- (iii) The Registrar Execution shall refer back to the Registrar Commercial Division, the impugned extracted order from his ruling, to bring the order in conformity with his ruling.
- (iv) The Applicants shall pay the costs of the application.



Alfonse Chigamoy Owiny - Dollo

JUDGE

24 - 02 - 2014