**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 429 OF 2014**

**(Arising from Civil Suit 381/2012 and MA 007/2013 )**

**BERNARD MUHINDO:::::::::::::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**DAVESHAN DEVELOPMENTS (U) LTD & ANOR ::::RESPONDENTS**

**BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO**

**RULING**

The Applicant brought this application by notice of motion under Section 98 of the CPA, Sections 14(2)(c), 33 & 39 of the Judicature Act, Order 40 rules 8,10 and 12 of the Civil Procedure Rules for orders that the property comprised in Block 255 Kyadondo Plot 1349 at Munyonyo is property of the Applicant; that the above described property be released from the attachment and the costs of the application are provided for.

The grounds of the application are that the applicant is the registered proprietor of the land described above, having acquired the same from Meddie Ssentongo on 20/1/12 and is currently in possession of the same. The Applicant deposed that at the time of purchase of the land, Meddie Ssentongo had mortgaged the title for the said land to M/s Concern Global Markets Ltd which mortgage was settled using the money the Applicant paid for the property and the mortgage was released.

Further that the Applicant’s property described above was attached by the court in favour of the Respondents against Meddie Ssentongo in HCCS 381 of 2012 and there was an attempt to evict him from his premises in May 2014. He deposed that it was it was in the interest of justice that the property be released from attachment as the Applicant owns the property on his own account and not on behalf or in trust of Meddie Ssentongo or anyone else.

In reply, the 2nd Respondent objected to the Application by averring that the Applicant’s transactions relating to the acquisition of the above property were riddled with fraud as they were mere shams and were only made to defeat the attachment before judgment. Further that there was never a mortgage of the property nor was there any actual consideration paid for the purchase of the property. He stated that Applicant was Meddie Sentongo’s agent and accomplice who had carefully planned and contrived a plot to defeat the attachment and probable execution in the event that the suit is determined in favour of the Respondent/Plaintiff.

In rejoinder, the Applicant deposed that he was neither an agent nor an accomplice of Meddie Ssentongo and had never been charged or made subject to any criminal investigation. Further that he had not committed any fraud in his dealings with the property described above and that he gave valuable consideration to acquire interest in the same.

I have perused the summons and the affidavit for and against it. I have also addressed my mind to the submissions of both Counsels.

**Order 40 Rule 8 of the Civil Procedure Rules** provides:

*Where any claim is preferred to property attached before judgment, the claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.*

**Rule 10** further provides:

*Attachment before judgment shall not affect the rights existing prior to the attachment of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of the decree.*

Any investigation under **Order 40 rule 8** **of the Civil Procedure Rules** of property attached before judgment should follow the same investigation and tests set out in **Order 22 rules 55 and 57 of the Civil Procedure Rules;** with respect to objections to attachment of property.  
The objector must adduce evidence to show that he or she had some interest in the property attached. The objector must also show that at the time of attachment the property was not in possession of the judgment debtor or trustee or tenant of the judgment debtor.

These principles were recently summed up in the judgment of this court in the case of **Irene Mutumba versus Crane Bank Ltd High Court in MA No. 557 of 2010** (unreported) at pages 10 – 11, 15, 16 and 17 where the following principles may be derived:-

·   The success of the objector’s case is emphasized as being dependent on he or she being in possession of the property attached at the time of attachment.

·   Title is only relevant in the enquiry to show whether possession is on account of or in trust for the judgment debtor, or some other person.

·   Ultimate questions of trust or complicated questions like the benami nature of the transaction are not within the scope of the enquiry and should not be delved into. Complicated issues involving fraud trust etc are to be decided by an ordinary suit and not by objector proceedings inquiry.

The Objector in this matter claims to have bought the land described above and that he had possession of it at the time of the attachment.  
In support of this claim, the Applicant annexed to his application a certificate of title in which he was registered as proprietor on 28/3/12 and a sale of land agreement dated 20/1/2012.

An investigation of this Certificate of title corroborates whatever is stated in the Applicant’s affidavit; the Applicant being the registered proprietor and having released the charge placed upon the property by Concern Global Market on 16/1/12.

The sale of land agreement dated 20/1/2012 reveals that the consideration provided by the Applicant was Ug. Shs 450,000,000/=, part payment of which was converted property comprised in Kyadondo Block 250 Plot 917 Bunga.

Counsel for the Respondent submitted these transactions were a sham but provided no evidence to disprove this. The 2nd Respondent deponed that the Applicant was an accomplice and agent of Meddie Ssentongo conspiring to frustrate the Plaintiff/Respondent in the event that he is the successful party in CS 381 of 2012 and imputed fraud in the transactions but similarly, nothing has been shown to support these allegations. Be that as it may, it has been held by courts that an application such as this cannot be opened up to complicated issues such as fraud. See: **Irene Mutumba versus Crane Bank Ltd (supra).**

The Applicant deponed that he is in physical possession of the property which has not been disputed by the Respondents.

All in all, the Applicant has successfully established that on the date of the attachment, he was in possession of the above described property and it is hereby ordered that the same be released from attachment with costs.

I do so order

**Henry Peter Adonyo**

**Judge**

**30th October, 2014**