

5 **THE REPUBLIC OF UGANDA**
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 191 OF 2016

10 **JOHNSON MUGISHA**
 NANKYA REGINA
 JOHN BUWEMBO
 JAMES MUTUMBA }**APPLICANTS**

VERSUS

15 **KAMPALA CAPITAL CITY AUTHORITY (KCCA) .RESPONDENTS**

STANBIC BANK (UGANDA) LTD } **GARNISHHES**
 DFCU BANK LTD

20 **CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA**
 HON. MR. JUSTICE F.M.S EGONDA NTENDE, JA
 HON.MR. JUSTICE SIMON BYABAKAMA MUGYENYI, JA

RULING OF THE COURT

25 This application is brought by notice of motion seeking the following orders;-

- 30 a) *The Court of Appeal be pleased on its own motion to give the applicants leave to appeal and /or the applicants be granted consequential extension of time within which to lodge their application for leave to appeal against the decision of Hon. Lady Justice Elizabeth Musoke delivered on the 29th September 2015 ordering the Applicants to refund*

5 **the monies amounting to Ug. Shs. 1,566,252,698 /=**
 (Uganda Shillings One Billion Five Hundred and
 Sixty Six Million Two Hundred and Fifty Two
 Thousand Six Hundred and Ninety Eight) obtained
10 **by an Order of Garnishee Absolute issued by His**
 Worship Isaac Muwata The Learned Registrar of the
 Execution & Bailiffs Division of the High Court in
 Miscellaneous Application No. 889 of 2012 in order
 to safeguard their right to appeal notwithstanding
15 **that they had first filed in The High Court Misc.**
 Application No. 481 of 2015 against the
 Respondents and Garnishees in The Civil Division of
 the High Court seeking leave to appeal against the
 decision of Hon. Lady Justice Elizabeth Musoke and
20 **the same was dismissed in a Ruling delivered by His**
 Lordship Stephen Musota on the 22nd June 2016.

25 **b) The Applicants be granted leave to appeal against**
 the Ruling of Hon. Lady Justice Elizabeth Musoke
 delivered on the 29th September 2015 ordering the
 Applicants to refund the monies amounting to Ug.
 shs. 1,566,252,698/= (Uganda Shillings One Billion
 Five Hundred and Sixty Six Million Two Hundred
 and Fifty Two Thousand Six Hundred and Ninety
30 **Eight) obtained by an Order of Garnishee Absolute**
 issued by His Worship Isaac Muwata The Learned
 Registrar of the Execution & Bailiffs Division of the
 High Court in Miscellaneous Application No. 889 of
 20 12.

35 **c) Costs to this application be in the Main Cause.**

It is supported by an affidavit deposed to by one Nankya
Regina the 2nd applicant. The affidavit is very lengthy and
argumentative and we cannot reproduce it here. We shall refer
40 to the relevant parts in the due course.

5 When the application came up for hearing **Mr. Justin Semuyaba** together with **Mr. Andrew Bwengye** appeared for the applicants. The 1st respondent was represented by **Mr. Denis Byaruhanga** while the 2nd respondent was represented by **Mr. Ferdinand Musiimenta**. No one appeared
10 for the 3rd respondent. Since there was evidence on record that the 3rd respondent had been duly served with the motion we allowed the applicant to proceed in the absence of 3rd respondent.

15 Mr. Semuyaba submitted that the applicants were on 29th September 2015 ordered to refund shs. 1,566,252,698 being money paid to the applicants under a garnishee order issued by the Registrar of the High Court in *Miscellaneous Application No. 889 of 2012*.

20 Counsel submitted that the applicants were aggrieved by the said order and had sought leave to appeal as the order was not appealable as of right. Hon. Justice Stephen Musota J who heard that application declined to grant the order hence this
25 application which is brought under *Rule 42(1), (2)* of the Rules of this Court seeking leave of this Court to appeal.

In her detailed Ruling dated 29th September 2015 against which the applicant now seeks leave of this court to appeal
30 Justice Elizabeth Musoke J (as she then was) held as follows at page 16-17 of her Judgment:-

5 ***“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***
10 ***proceedings were commenced without a proper judgment, decree or order of court.***

15 ***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***
20 ***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.***

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

30 ***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.”***

5 It was submitted here by Mr. Semuyaba for the applicants that
the garnishee order *Nisi* and *garnishee order absolute* were
both issued following a decree of this Court in *Civil Application*
No.33 of 2006 arising from *Civil appeal No. 18 of 2006*. He
contended that, in that case this court exercising the power of
10 the trial court under *Section 11 of the Judicature Act (Cap 13)*
issued a decree in which the 1st respondent was to pay to the
applicants their terminal benefits.

We have perused the Ruling in the said *Court of Appeal: Civil*
15 *Application No 33 of 2006*, the applicants in that matter were
the same in this one. The respondent in that application was
Kampala Capital City (KCC) the predecessor to Kampala Capital
City Authority (KCCA).

20 In that application the applicants sought the following orders;-

**1) The settlement agreement and release entered into
and filed in Court by counsel for the respective parties
be set aside.**

25 **2) Civil Appeal No. 18/06 which the counsel sought to
compromise be reinstated on the cause list for hearing
and final disposal.**

30 **3) Provision be made as to the costs of the application.**

The grounds of the application were set out in the Notice of
motion as follows:-



5 1) ***The settlement / agreement and release was executed and filed in court by counsel without the knowledge and consent of the applicants, the interested parties.***

10 2) ***The agreement and release was registered in court by counsel fraudulently in that it was negotiated without physical participation of the applicants.***

15 3) ***The settlement did not incorporate fully the entitlements of the applicants as stipulated in their retrenchment letter.***

20 4) ***It is fair and in the interest of justice that the said settlement be set aside and the appeal to be heard and disposed of on merit.***

Learned Justice of appeal concluded their ruling at page 12-13 as follows:-

25 ***“Consequently we are constrained to find that there was no decree and therefore there was no proper appeal before this court which learned counsel for the applicants is inviting us to hear and determine on merit.***

30 ***The second aspect of the confusion in the case was the Uganda Public Employees Union Agreement. The agreement in clause 4 therefore provided for terminal benefits for former and future employees of the respondent. This means that the applicants as former***
35 ***employees might have been beneficiaries of this clause. However, they did not amend their complaint***

5 which had been filed in 1995 to bring the agreement
on board. It must have surfaced as the learned trial
Judge was trying to settle the case but the record of
the proceedings does not indicate how it was
introduced. The fact remains that it was not exhibited
10 and ought not to have been a basis for any settlement
unless both parties agreed to it something that was
not done. In cases where parties consent to settle or
compromise a dispute, the court has to endorse the
settlement and pronounce itself on the matter.

15 We have given anxious consideration to this old
dispute. The documents available to us and the
annextures attached to Mr. Sempa-Mutyaba's affidavit
indicate that most of the applicants including the first
applicant have been paid their terminal benefits. In
20 case there are retrenches who have not yet been paid,
the formula that the respondent used to pay those it
paid can be used to pay any of the remaining
retrenches who have not been paid. In the
25 circumstances of this case we do not consider it wise
to remit the file back to High Court for trial.

In the result this application ought to fail with no
order as to costs.

30 It is from this Judgment that the applicants and their counsel
extracted 'a decree' upon which the garnishee orders were issued

5 by the Registrar of the High Court and upon which the
applicants were paid Shs.1,566,256,698/= the amount Justice
Musoke J (as she then was) ordered them to refund.

10 In order for an application such as this one before us to succeed,
the applicant must show to the satisfaction of the Court that the
intended appeal has likelihood of success. From what we have
set out above, we are not satisfied that the intended appeal has
any likelihood of success. Court of appeal *Miscellaneous*
15 *Application No. 33 of 2006* was dismissed and as such no positive
order could have been extracted therefrom to form a basis of any
claim against the 1st respondent. There was no decree from
which *garnishee* orders could result what Mr. Semuyaba refers
to as 'a decree' from which the *garnishee* orders were issued was
certainly a forgery or a misrepresentation. This court cannot
20 sanction illegal and fraudulent transaction perpetuated by the
applicants and their counsel.

We agree with the decision of Justice Musoke J (as she then was)
that the garnishee proceedings were anullity and the resultant
25 order was void *abnitio*. The money obtained by the applicant
resulting from the said proceedings must be returned by the
applicants and for those who have since deceased by their
estates. The respondents are at liberty to recover the said money
through court process.

30 The Registrar of this court is hereby directed to serve a copy of
this ruling and that of Justice E. Musoke referred to above

5 upon the Director of Public Prosecutions and the Secretary to
the Law Council for them to ascertain whether or not the
applicants and their counsel criminally culpable for the
matters raised herein.


10 Needless to say, we find no merit whatsoever in this application
which is hereby dismissed with costs to the respondents.

Dated at **Kampala** this^{27th}.....day of.....^{Feb.}.....2017.

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HON. KENNETH KAKURU
JUSTICE OF APPEAL


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HON. F.M.S EGONDA NTENDE
JUSTICE OF APPEAL

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.....
HON. SIMON BYABAKAMA MUGYENYI
JUSTICE OF APPEAL

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^{27/2/2017}
Andrew Bwengye for Appellant appearing
with Justice Semunyabe
Dennis Byaruhanga for Respondents
Amis c/c
9
c/c: Ruling read in court
 4/12