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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBALE  
HCT-04-CV-MA-0143 OF 2001**

(Arising from MA MM No. 15 of 2001, MA No. 18 of 2000, MA No. 40 of 2001 and HCCS No. 12 of 2000)

**EMMANUEL NANGOLI.....APELLANT/DEBTOR**

**VERSUS**

**MANAFA DEALERS LTD. ....RESPONDENT/CREDITOR**

**BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI**

**RULING**

This is an application by way of notice of motion on an appeal against the orders of the Chief Magistrate Mbale in which he issued a special certificate to levy distress. The application by way of an appeal was brought under O.50 r.8 of the Civil Procedure Rules (hereinafter CPR). The special Certificate was issued under Section 2 of The Distress for Rent (Bailiffs) Act, Cap. 76, and The Distress for Rent (Bailiffs) Rules S.I. No. 76-1.

When the matter came up for hearing Mr. Natsomi learned counsel for the respondent raised two preliminary points of law for determination. This ruling is in respect thereof. But first a brief background is in order.

The appellant sued the respondent in this court under HCCS No. 12 of 2000 for cancellation of the title deed under the names of the respondent in property known as LRV 238 F Plot 21 Kumi Road, Mbale, a permanent injunction to restrain the respondent from interfering in appellant's quiet

enjoyment of that 'suit' property and compensation for improvements and costs of the suit.

The appellant filed an application for a temporary injunction, where Maniraguha J. (RIP) stated the facts as follows. The appellant was the sitting tenant in suit property. He applied for and was granted an offer to purchase suit property by the Departed Asians Property Custodian Board (hereinafter (DAPCB)). It would appear t5hat the offer was eventually terminated, and the respondent purchased the property. He secured a title to the same, and at a certain point in time, entered into a tenancy agreement with the appellant. Some part payments in respect of rent were made.

The respondent sought to levy for the balance of the rent, and for that reason applied to the Chief Magistrate for a special certificate to levy distress for the rent, in MA MM 15 of 2001. The Chief Magistrate granted the same hence this appeal by way of an application by notice of motion.

The prayers or complaints in the motion were 1<sup>st</sup> that the special certificate to levy distress be cancelled, 2<sup>nd</sup> that the court bailiffs be restrained to levy under the special certificate, and lastly a declaration that the special certificate was irregularly obtained and was an abuse of court process.

The objections by Counsel for the respondent were basically that the procedure adopted by the appellant was improper and so irregular that the whole application ought to be dismissed. For the appellant, it was argued that the procedure even if it was not entirely proper, the matter be

determined on the merits. After all courts are enjoined to apply substantive justice, and disregard mere technicalities.

Section 2 of the Distress for Rent (Bailiffs) Act reads as follows;

‘No person, other than the landlord in person, or his or her attorney or the legal owner of a reversion, shall act as bailiff to levy any distress for rent unless he or she shall be authorised to act as bailiff by a certificate in writing under the hand of a certifying officer, and such certificate may be general or apply to a particular distress or distresses.’

Section 1 of the act defines ‘certifying officer’ as a Chief Magistrate and a Magistrate Grade I. The Distress for Rent (Bailiffs) Rules, rule 3 thereof provides for types of certificates. These may be a general certificate, or a special certificate.

Rule 6 provides in part that a general or special certificate may, on payment of the prescribed fee, be granted to any applicant who satisfies the authority granting it that he or she is a fit and proper person to hold a certificate.

From the reading of the above provisions, it would appear that authority to grant a certificate to levy distress for rent is given to either the Chief Magistrate or a Magistrate Grade I. This may be a general certificate, in which case, the person to whom it is granted is authorised to levy distress anywhere in Uganda according to rule 4 of the above rules.

It may be a special certificate, in which case, sub rule (2) of rule 3 applies. It states that,

‘A special certificate shall specify the particular distress or distresses to which it applies.’

The provisions referred to above do not require that the person who may be affected adversely by the grant of the certificate be given an opportunity to be heard before the certificate is granted. The law provides that the applicant must satisfy the granting authority that he or she is a fit and proper person to hold the certificate. Once the certifying officer is so satisfied, then a general or special certificate will be issued.

A person who is aggrieved by the actions of the holder of the certificate in the levying of distress for rent has remedies. The dissatisfaction could arise where the complaint is that the distress is illegal, or irregular or excessive. *Halsbury's Laws of England* 4<sup>th</sup> Edition at page 183 paragraph 368 discusses this extensively.

Illegal distress is one which is wrongful at the very outset, that is to say where there was no right to distrain or where a wrongful act was committed at the beginning of the levy invalidating all subsequent proceedings. In such a case, the distrainor is a trespasser ab initio, and it is no defence that the goods distrained were applied in settlement of the rent.

An irregular distress is one where although the levy was legal and in order, the subsequent proceedings were conducted in an unlawful manner. The distrainor must not seize goods which are more than are reasonably

sufficient to satisfy the rent arrears plus the costs of the distress, otherwise it becomes excessive distress, which is unlawful.

The action in damages lies for wrongful distress, whether it is illegal, irregular or excessive. The person who may bring such a suit may be the tenant, or the owner of the goods, or one who was having enjoyment and use of the chattels.

The present application was not an action for damages for illegal, or irregular or excessive distress. It was an appeal against the decision of the Chief Magistrate for grant of the special certificate to levy distress for rent.

An appeal is created by statute. It cannot be presumed. There is no provision for appeal against the decision of the certifying officer to grant the general or special certificate to levy distress for rent in the Distress for Rent (Bailiffs) Act or the rules made there under.

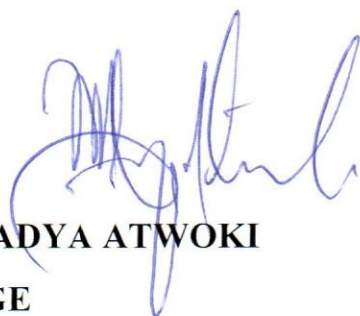
The appeal was brought under O.50 r. 8 of the CPR, which provides As follows;

‘Any person aggrieved by any order of a registrar may appeal from the order to the High Court. The appeal shall be by motion on notice.’

The appeal provided for in the above provision is from an order made by a registrar, and not one made by a Chief Magistrate or a Magistrate Grade I. But in any event, I noted above that there is no provision for appeal in respect of grant of a certificate to levy distress for rent.

This was not a mere technicality. There was no right of appeal. The Order of the CPR under which the matter was brought to this court was not the relevant one. The preliminary objection is upheld even if for slightly different but related reasons.

The application is accordingly dismissed with costs to the respondent.

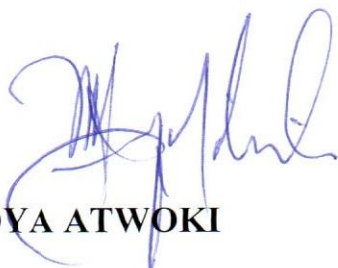


**RUGADYA ATWOKI**

**JUDGE**

**09/03/09.**

Court: This ruling shall be delivered by the D/Registrar of the court.



**RUGADYA ATWOKI**

**JUDGE**

**09/03/09.**