

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO 369 OF 2019
ARISING OUT OF MISC. APPLICATION NO. 285 OF 2018
(ARISING FROM HCMC NO. 120 OF 2019)**

**FRED MUWEMA APPLICANT
VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON JUSTICE MUSA SSEKAANA

RULING

This is an application for different interlocutory reliefs or orders brought under 33 of the Judicature Act Cap 13 and Sections 82 & 98 of the Civil Procedure Act and Order 46 rules 1 & 8 of the Civil Procedure Act.

The applicant filed this application seeking orders that;

- 1) The Interim Orders of this Court made on 10th May, 2019 in Miscellaneous Application No. 285 of 2019 touching motor vehicle registration Number UAT 010J, Nisan Patrol, Station Wagon, White in Colour belonging to the applicant be reviewed.

- 2) An Order doth issue against the respondent officials, servants and agents for the immediate release of motor vehicle registration Number UAT 010J, Nissan Patrol, Station Wagon, White in Colour belonging to the applicant and attached on 17th April, 2019 in the process of executing a Warrant of distress for recovery of taxes against a Third party, Fred Muwema.

- 3) Costs of the Application be provided for.

The application was supported by an affidavit sworn by the applicant Desire Muwema Bulamu whereas the respondent filed an affidavit in support sworn by Alex Alideki Kaddu an advocate in the Legal Services and Board Affairs Department of the respondent. The parties were directed to file written submissions.

The court made interim orders on the 10th May, 2019 in Miscellaneous Application No. 285 of 2019 to the effect that motor vehicle registration Number UAT 010J, Nissan Patrol, Station Wagon, White in Colour should remain in the custody of the Respondent with limited access to it, for minor repairs and ignition until the determination of the application or further orders of this Court.

The applicant as the registered proprietor of the said motor vehicle registration Number UAT 010J, Nissan Patrol, Station Wagon, White in Colour is aggrieved by the said orders in a case in which the Applicant is not a party.

The respondent attached the motor vehicle in issue on the day Mr Fred Muwema had used the said it as the applicant's spouse and therefore the attachment was in error. The applicant has been put to great inconvenience and financial expense to use or hire alternative means of transport from 17th April, 2019 to date.

The said motor vehicle is wasting away in the Respondent's custody and the depreciation and the mechanical condition will be affected which damage may not be atoned for since the applicant is not a party to the proceedings in *Miscellaneous Cause 120 of 2019; Fred Muwema vs Uganda Revenue Authority*.

The applicant's right to property and the right to be heard before a decision is made and or the right to a fair hearing is being infringed by the respondent's action of attaching her vehicle.

The respondent challenged the application by contending that the applicant is not an aggrieved party in respect of the interim order granted and as such has no locus standi to bring the application.

The ownership of motor vehicle registration UAT 010J Nissan Patrol is subject of legal proceedings pending determination of this Honourable Court and thus orders sought by the applicant seeking release of the said motor vehicle will prejudice the administration of justice.

The applicant's application is an abuse of court process, incurably defective and ought to be dismissed with costs.

That the applicant's application has no probability of success and the application is overtaken by events.

The applicant's counsel submitted that the applicant is a person aggrieved by the order given in this court since she is the registered owner of Motor Vehicle No. UAT 010J Nissan Patrol.

The respondent donot seem to disagree to this contention in their affidavit in support and their submission. They only contend that the applicant admits being a wife of the applicant and as such they are litigating under the same name. Therefore, the matter is *res judicata*.

The applicant is indeed the owner of the said vehicle and as such he is aggrieved by the orders given by this court. The respondent has not set out any justification for the attachment of the said vehicle which is not registered in the names of the person they contend owes them a tax i.e Fred Muwema.

A tax liability is personal and if any is demanded there must be justifiable reason why such property not registered in the names of the tax payer must be attached. A close nexus must be drawn between the property being attached and the defaulting tax payer.

The submission of counsel for the respondent that the matter is *res judicata* is baseless since the matter had never been determined on merits and the main application is still pending determination. Above all this is an application for review and the contention that it is *res judicata* cannot suffice.

In accordance with the powers vested in this court, this court shall proceed to grant the remedies sought under Section 33 of the Judicature Act which provides;

“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any other written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”

This court reviews the earlier order which allowed the Motor Vehicle No. UAT 010J Nissan Patrol to remain in custody of the respondent and that the applicant or his agents or servants in *Miscellaneous Application No. 120 of 2019* be allowed access to ignite it and make minor repairs until the determination of the application or further orders of the court.

This court orders the respondent, officials and servants to immediately release Motor Vehicle No. UAT 010J Nissan Patrol to the applicant in this matter as the registered owner.

The costs shall be in the cause.

I so Order

Ssekaana Musa

Judge

27th June 2019