THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

MISCELLANEOUS APPLICATION NO. 665 OF 2019

(ARISING OUT OF MISCELLANOEUS APPLICATION 625 OF 2019)

(ARISING FROM MISCELLANEOUS CAUSE NO.286 OF 2019)

DEOX TIBEINGANA---------- APPLICANT

VERSUS

VIJAY REDDY----------RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application by way of Notice of Motion against the respondent under Section 82 of the Civil Procedure Act and Order 46 r 1,2 & 8 of the Civil Procedure Rules, for orders that;

1. The Order granting an Interim Protective Order of 15 days within which the Applicant should pay the amount due to the respondent on 18th September, 2019 be reviewed on account of mistake apparent on the face of the record and/ or material irregularity.

2. The Interim Protective Order issued on 18th September, 2019 be extended to such a time when Court will conclude investigation and determination of its legality.

3. Costs of this application be provided for.

The grounds in support of this application are set out in the Notice of motion affidavit of ***Deox Tibeingana*** which briefly states;

1. That the applicant successfully applied to this Honourable Court for an Interim protective order against the respondent as the applicant's Creditor vide Miscellaneous Cause No. 286 of 2019.

2. That the applicant has resources, assets and capacity to pay all the creditors and remain afloat and was required to reorganise his business, and to dispose them off within fifteen days(15 days)

3. That there is a mistake apparent on the face of the record that warrants the review of interim protective Order as no insolvency practitioner had been named, endorsed and or appointed by court.

4. That as a result the applicant cannot fully benefit from the protective Order.

5. There is thus sufficient cause for this court to review the terms of the order.

6. That it is just and equitable that this application is allowed.

In opposition to this Application the Respondent-Vijay Reddy filed an affidavit briefly stating that;

1. The application has no merit, is a nullity in law and a total abuse of court process and only intended to frustrate execution of the warrant of Court.

2. That on 18th day of September 2019, when Miscellaneous Application 625 of 2019 and Miscellaneous Cause No. 286 of 2019 came up for hearing a consent was entered by the parties in the terms described by the order.

3. That this application is not merited since it is not an application to set aside a Consent Order that was entered into by the parties.

4. That there was no error whatsoever on record that warrants a review by this court. The alleged failure of naming an insolvency practitioner is not a mistake apparent on the record within the meaning of the law.

5. That the applicant like in the previous many applications in different courts is only interested in frustrating execution of an order of court that was issued against him at the Execution division to the detriment of the applicant.

In the interest of time the respective counsel were directed to file written submissions and I have considered the same in this application. The applicant was represented by *Mr Ssempala David* whereas the respondent were represented *Mr Kagoro Friday Robert*.

Whether there was non-compliance with the procedural requirements preceding the grant of an Interim Protective Order.

I should note that the applicant has proceeded under a misapprehension that the court determined Miscellaneous Cause No. 286 of 2019 which was the main application upon which this court would have issued an Interim Protective Order in accordance with the Insolvency Act and Insolvency regulations.

The record of court clearly shows that the matter/ application that was determined and upon which an Interim Order was issued was Miscellaneous Application No. 625 of 2019.

According to the Court record it was noted as follows;

*"**By consent of the parties, this court issues an Interim Protective Order of 15 days within which the applicant should pay the amount due to the respondent. Thereafter, the execution shall issue accordingly.***
I so order
Judge"

The said order was indeed obtained upon an agreement/consent of the parties pending the determination of the main application No. 286 of 2019.applicant's

counsel proceeded and extracted the order for Miscellaneous Application 625 of 2019 in the above terms and the same was duly signed by court.

It would appear the applicant's counsel in a letter dated 30th September, 2019 just a day before the expiry of the Interim Order, wrote to court informing court of an error apparent on the face of the record for which he wished the court could review.

In the said letter he requested court for an extension of time for the operation of the Order, until when the court investigates and determines its legality. On the same day he filed this application seeking to review the said order on account of an error apparent on the face of the record.

The said application had been brought under Section 98 of the Civil Procedure Act under the inherent powers of court and not under the Insolvency Act. It is therefore erroneous for the applicant's counsel to try to review an order made by consent of the parties under inherent powers of court as if it was an Order made under the Insolvency Act.

I equally find that this application is erroneously brought under section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. It may be a deliberate move by the applicant to continue to delay the execution proceedings against him.

The law on review is set out in Section 82 of the Civil Procedure Act and Order 46 rule of the Civil Procedure Rules. The applicant has premised his application on ***" Mistake apparent on the face of the record and or a material irregularity"***

Review means re-consideration of order or decree by a court which passed the order or decree.

If there is an error due to human failing, it cannot be permitted to perpetuate and to defeat justice. Such Mistakes or errors must be corrected to prevent miscarriage of justice. The rectification of a judgment stems from the fundamental principle that justice is above all. It is exercised to remove an error and not to disturb finality.

Reviewing a judgment/ruling based on mistake or error apparent on the face of the record can only be done if it is self-evident and does not require an examination or argument to establish it.

An error which has to be established by a long drawn out process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. ***See Civil Procedure and Practice in Uganda by M & SN Ssekaana page 453***

I find no mistake of law apparent on the face of record as contended by applicant's counsel or the applicant. The order that is sought to be reviewed was issued by consent of the parties.

It is neither fair to the court which decided the matter nor to the huge backlog of cases waiting in the queue for disposal to file review applications indiscriminately and fight over again the same battle which has been fought and lost. Public time and resources is wasted in such matters and the practice, therefore, should be deprecated.

The applicant did not have any justification for filing this application and the same was merely an abuse of court process.

Abuse of Court Process was defined in Black's Law dictionary (6th Ed) as

> "***A malicious abuse of the legal process occurs when the party employs it for some unlawful object, not the purpose which it is intended by the law to effect, in other words a perversion of it***."

Parties and their respective counsel should take the necessary steps to safeguard the integrity of the judiciary and to obviate actions likely to abuse its process. See ***Caneland Ltd & Others vs Delphis Bank Ltd Civil Application No. 344 of 1999 (Kenya Court of Appeal)***

Similarly, in the case of; **Benkay Nigeria Limited vs Cadbury Nigeria Limited No. 29 of 2006** (*Supreme Court of Nigeria*), their Lordships held:

> "*In Seraki vs Kotoye (1992) 9 NWLR (pt 264) 156 at 188, this court on abuse of court process held….the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of*

actions on the same subject matter against the same opponent on the same issue.

The Court further observed that;

"*….to constitute abuse of court process, the multiplicity of suits must have been instituted by one person against his opponent on the same set of facts*"

The respondent's counsel has contended that the application is an abuse of court process that ought to be dismissed with costs. The said application is intended to frustrate execution of the warrant of arrest issued by the Execution Division of the High Court.

This application fails and the same is dismissed with costs to the respondent

It is so ordered.

SSEKAANA MUSA
JUDGE
4th/11/2019