THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT KAMPALA

(EXECUTION DIVISION)

EXECUTION MISC. APPLICATION No. 1823 OF 2014

(Arising from High Court Civil Suit No. 176 of 1989)

ACAITUM OMANIKOR ISIAGI..... APPLICANT

VERSUS

1. ALKAS INTERNATIONAL (U) LTD
2. GEORGE MICHAEL MUKULA :::::::::::::::::::::::::::: RESPONDENTS

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The background to this matter is quite simple. It first came before me by manner of reference by the Registrar Execution. Upon an application by M/s Kanyeihamba & Co. Advocates, the Assistant Registrar Execution had issued a notice to the two Respondents on the 18th August 2014 to appear in Court the very following day, to show cause why execution by way of their arrest and committal to civil prison, as judgment debtors, should not issue. However, M/s GP Advocates, acting for the 2nd Respondent, filed a complaint with the said Registrar objecting to the threatened execution against the 2nd Respondent. Counsel pointed out that the 2nd Respondent is not liable to execution in the matter herein; and gave two grounds in support of the contention; namely that: –

(i) The suit as against the 2nd Respondent had been withdrawn by the time of the issuance of the decree sought to be executed.

(ii) In any case, the decree now sought to be executed is well over 12 (twelve) years old; and accordingly, in accordance with the provisions of section 36 of the Civil Procedure Act, it is barred from being so executed.

Counsel attached several documents, in addition to the judgment of Ntabgoba P.J., as the basis of their objection to the threatened execution against the 2nd Respondent herein. First, is Misc. Application No. 418 of 2007, which sought a review of the judgment in the head suit herein and that the 2nd Respondent be made a party to the head suit; but it was withdrawn. Second, is Misc. Application No. 315 of 2008, which sought the lifting of the corporate veil of the 2nd Respondent herein, and that the 2nd Respondent herein with others be made to satisfy the decree herein. The application was however, dismissed by Lady Justice Elisabeth Musoke. Third, is Misc. Application No. 97 of 2013, which sought a reinstatement of Misc. Application No. 315 of 2008; but it was also dismissed by Court.

Owing to this information then, the Assistant Registrar referred the matter to me. I believe in doing this, the Registrar was alive to the provisions of 0. 50, r. 7, of the Civil Procedure Rules, on powers of the Registrars of Court to refer to the High Court any matter that appears to be proper for consideration by a judge of the High Court. Upon perusal of the record, I gave the Registrar the following short but clearly worded directive dated the 19th day of September 2014: –

> *"Your Worship, I have read the judgment of Ntabogoba P.J., and it is clear Hon Mukula was no longer a party; so there is no decree against him. It would therefore be erroneous to issue a warrant of arrest against him."*

It is apparent that the Assistant Registrar heeded my directive, and so declined to take any action against the 2nd Respondent (Hon George Mike Mukula). It is this that caused M/s Kanyeihamba & Co. Advocates to lodge a written complaint to me, relaying the Applicant's insistence that Hon. George Michael Mukula *'should be solely responsible for satisfying the order of the learned Principal Judge in the*

above suit.' The reason Counsel has advanced for this, is that Hon. George Michael Mukula was the founder and sole proprietor of the 1st Respondent; and so, he is responsible for the payment of the judgment debt to the Applicant as ordered and decreed by the High Court.

Counsel graciously enclosed the judgment of Ntabgoba P.J. in the head suit, as well as the decree extracted there from, to buttress this contention. Because the arguments of M/s GP Advocates had already generated my earlier directive to the Registrar, I did not deem it necessary to require them to file any further response. All that would enable this Court pronounce itself on the matter are on record. The judgment of Ntabgoba P.J., in the head suit is quite clear as to what transpired in the course of the proceedings before the learned judge. At page two of the judgment, he stated as follows: –

> *"At some stage, the parties decided to settle out of Court and the settlement was recorded by Court which then made an order for the defendant to replace the vehicle. The Court also allowed an application to withdraw the case against the second defendant, one G.M. Mukula. The case remained for assessment of damages."*

Thereafter, as is evident from the judgment, the learned judge, and in apparent recognition of the withdrawal of Hon. George Michael Mukula from the suit, noticeably abandoned reference to *'the defendants'*, and instead referred to *'the defendant'* to the suit. Similarly, the decree extracted out of the judgment has the 1st Respondent herein as the sole Defendant. Therefore, one need not look beyond the judgment of Ntabgoba P.J. in issue, to resolve this matter. Once he applied for, and obtained Court's acquiescence to the withdrawal of Hon. George Michael Mukula from the suit, the Plaintiff terminated the suit as against Hon. George Michael Mukula. Indeed, it is owing to this reality that the Plaintiff later made futile

attempts through the applications listed above, to have Hon. George Michael Mukula reinstated as a party to the suit.

It follows that this application seeking to move the executing Court to lift the veil is, I am afraid, misplaced. This is because, first, if the Plaintiff had desired to have the corporate veil lifted, to enable him make a claim against Hon. George Michael Mukula as the founder, and sole proprietor, of the 1st Respondent, and therefore the real person with whom he had contracted, then his withdrawal of the suit as against Hon. George Michael Mukula was ill–advised, and a grave mistake. Second, he should have sought to lift the veil in the course of the trial; and not after judgment. The executing Court comes in after delivery of judgment; and the remit of the functions of the executing Court does not extend to variation of a Court decree. That is the mandate of the trial Court upon review, or an appellate Court.

The other matter I have also noticed, from the record, is that M/s Kanyeihamba & Co. Advocates took it upon themselves to nominate a bailiff of the Court to carry out the execution; and merely sought the endorsement of the Registrar Execution. This offends against the rules regarding empowerment of the bailiffs; and Registrars in charge of execution have to guard against it. It is the duty of the Registrar Execution alone to appoint a bailiff for, and charge such person with the duty of, execution of a Court decree. It is this appointment, which clothes such bailiff with the authority as a Court official, and accords him or her the necessary protection in the lawful execution of the decree. Otherwise, a bailiff who is a nominee of a Judgment creditor with the mere endorsement of the Registrar would be beholden to two power centres – that of the judgment creditor, and of the Court. This is a recipe for confusion; and can only result in mal–administration of justice.

In the result, it is my finding that Hon. George Michael Mukula is not a judgment debtor in the head suit herein at all. The decree in the head suit herein is against the 1st Respondent solely, as the judgment debtor. Accordingly, there is no basis for

carrying out the execution of such decree against Hon. George Michael Mukula. I therefore disallow the application to execute the decree against him. I have however elected to make no order as to costs. In the event, I hereby direct the Registrar Execution to communicate to the Counsels of the respective parties herein, this considered view of the Court.

Alfonse Chigamoy Owiny – Dollo

JUDGE

12 – 12 – 2014