THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT KAMPALA

(EXECUTION DIVISION)

MISCELLANEOUS APPLICATION No. 210 OF 2015

(Arising from Execution Misc. Cause No. 3234 of 2014)

ANATOLIA ENTERPRISES LTD..... APPLICANT

VERSUS

TWEYAMBE ESAU *trading/as*..... **RESPONDENT**
CRANE FORCE AUCTIONEERS

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

RULING

This application is brought under the provisions of sections 83 and 98 of the Civil Procedure Act (CPA), and 0.52 rr 1 & 3 of the Civil Procedure Rules. The background to the application is that the Respondent, as holder of a power of attorney from the registered proprietor of property comprised in Volume 323 Folio 15 Plot No. 77/99 Seventh Street Industrial Area, Kampala (the suit property herein), applied ex parte to Court, vide Misc. Cause No. 3234 of 2014, for an order of distress for rent to issue against the Applicant herein who is a tenant in the suit property. The Court record shows that the application was first fixed for hearing on the 30th of January 2015; but this was altered and brought forward to the 19th of the month, when it was heard. The Registrar granted the application and issued the order sought.

The Respondent herein then, armed with the Court order, levied the distress ordered; for which the Applicant herein is aggrieved, hence this application seeking a review of that order, on the following grounds; namely that: –

(i) The Court acted with material irregularity and injustice in entering judgment against the Applicant in Misc. Cause No. 3234 of 2014.

(ii) New matters of evidence previously overlooked by either excusable misfortune or otherwise exist and the Applicant is being condemned unheard.

(iii) Some mistake or error apparent on the record exists.

(iv) It is in the interest of justice that this Honourable Court reviews the judgment and ruling of the Registrar in Misc. Cause No. 3234 of 2014.

In the affidavit sworn by one Tayeb Moradi in support of the application, the deponent states the facts above, and further that the application for distress for rent was not served on the Applicant herein who was the Respondent therein; and contends that the hearing of the application ex parte was dubious, and to the detriment of the Applicant herein. The affidavit also states that '*whereas the Applicant entered into a tenancy agreement with the Respondent, it has recently come to the former's notice that the said Respondent was not or at all the Landlord to receive rental monies from the Applicant'*. For this, the Applicant relies on a letter from the Custodian Board to the Respondent herein, which it attaches to the application, seeking some clarification over the Respondent's ownership of the suit property.

In his affidavit in reply, the Respondent deponed that the application is brought under the wrong provisions of the law, and further that it is the responsibility of

Court to fix hearing dates; hence, he should not be held accountable for any alleged impropriety in fixing such date. He further states that applications for distress for rent are ex parte, for the obvious reason that it would otherwise alert the tenant who would ensure that the properties intended for distress become non –available, and thus rendering the Court order nugatory. As Court had directed, the Counsels for the parties hereto filed written submissions in support of the respective party's case. Counsel for the Respondent raised a preliminary point of objection faulting this application, contending that it is incompetent, as it should have been brought before the Registrar who made the order complained of.

With regard to the Court, which is competent to hear an application for review of an order made by the Registrar of the High Court, the preliminary point of objection has no merit. This is in the light of the decision of the Supreme Court in the case of ***Attorney General & Uganda Land Commission vs James Mark Kamoga & Anor, SCCA No. 8 of 2004***, where, in pointing out that the powers conferred on Registrars of the High Court by law are circumscribed, Mulenga JSC stated as follows: –

> *"The powers of Registrars are set out in Order 50 of the CPR, and enhanced in Practice Direction No. 1 of 2002. I need not reproduce the detailed provisions here. It suffices to say that the former confers on the Registrar powers to enter judgments in uncontested cases and consent judgments, to deal with formal steps preliminary to the trial, and with interlocutory applications, and to make formal orders in execution of decrees; and the latter empowers the Registrar to handle matters governed by specified rules and Orders of the CPR, which do not include any rule of Order 46. Clearly, the power to review judgments or orders of the High Court (including those entered by the Registrar) is not among the powers delegated to the Registrar."*

Accordingly then, the instant application for review could not be brought before the Registrar who made the order complained against; but instead, before a judge of the High Court. Therefore, it is properly before me. However, the other points of objection seem to have merit. The matter, for which the Applicant seeks a review order, was an application brought before the Registrar of the High Court. Section 83 of the CPA, under which this application is brought, empowers the High Court to revise orders made by a Magistrate's Court. This may be on grounds either that the Magistrate acted without jurisdiction, or failed to act where he or she should have acted. The Registrar of the High Court does not exercise powers of a Magistrate's Court; but instead of the High Court. Hence bringing this application for review, but under rules providing for revision, was a defective procedure.

The proper procedure for seeking the relief of review is provided for under the provisions of section 82 of the Civil Procedure Act, and 0.46 of the Civil Procedure Rules, which lays down the procedure applicable. For a person aggrieved by an order made by the Registrar, such person has two procedural options available. Since the Applicant's complaint is that in proceeding ex parte the Registrar had denied it the right to be heard, it could have applied to the Registrar, under the provisions of 0.9 r.27 of the CPR, to set aside the ex parte order. In the alternative, the Applicant could have proceeded by way of an appeal to the High Court (meaning a judge of the High Court) under the provisions of 0.50 r.8 of the CPR, which provides for such an appeal by *'any person aggrieved by any order of a Registrar'*.

I am cognizant of the provisions of Article 126 of the Constitution enjoining this Court to render substantive justice; but without undue regard to rules of procedure. However, parties to a suit should not hide behind this provision of the Constitution to flout the rules of procedure; which, as handmaidens of justice, are crucial for the proper administration of justice. Indeed, this provision of the Constitution does not oust or dispense with the rules of procedure altogether. To the contrary, that

provision of the Constitution is itself qualified; and in fact warns against undue disregard of the rules of procedure even when one seeks to administer substantive justice. Had it been otherwise, it would make the pursuit of legal remedy the more difficult and even give rise to abuse of the due process.

Similarly, an aggrieved person should only invoke the provisions of section 98 of the Civil Procedure Rules where there is no clear law providing for a remedy. That is certainly not the case here where, as has been pointed out, the law provides for ample procedural course of action available to an aggrieved person. I take due note of the fact that in the matter before me, the Applicant has brokered and enjoys the professional services of learned Counsel; who has, nevertheless, ignored the procedures provided to move Court to inquire into the substance of its grievance, and proceeded entirely on wrong and irreconcilable provisions of the law. I find the defect in the procedure adopted by the Applicant grave, inexcusable, and incurable.

In the main then, the preliminary points of objection succeed; and in the event, I am constrained to decline to inquire into the merit of its complaint. Accordingly, I dismiss this application, with costs to the Respondent.

Alfonse Chigamoy Owiny – Dollo
JUDGE

16 – 10 – 2015