

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(EXECUTION & BAILIFFS DIVISION)

MISCELLANEOUS APPLICATION No. 1939 OF 2013
*(Arising from EMA No. 1476 of 2013, arising from H.C. (Comm. Div.) Civil Suit
No. 104 of 2013)*

FLORENCE TIBAYUNGWA..... APPLICANT

VERSUS

DUSABE MARY RESPONDENT

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

RULING

This application has been brought under the provisions of sections 98 and 82 of the Civil Procedure Act, and as well, 0. 52 rr.1, 2, & 3, and 0. 46, of the Civil Procedure Rules. By it, the Applicant has moved Court for orders that: –

1. The consent settlement entered vide EMA NO. 1476 of 2013 be reviewed and or set aside.
2. The Applicant be authorised to institute fresh execution proceedings against the Respondent.

The application is supported by an affidavit sworn by the Applicant, in which she denies ever giving her former Counsel authority to pursue a negotiated settlement of her case; and that, in fact, she only learnt of the settlement after it had been concluded. She objects to the negotiated settlement on the ground that it is adverse to her interests in that it obliges her to settle for less than what the trial Court had decreed to her. Furthermore, she points out that the settlement instead caters for her

former Counsel's costs, and the bailiff's fee, to her detriment. The Respondent has contended in her affidavit in response to the application that the contested settlement was reached after negotiations; and in this, the Applicant's Counsel was in full contact with the Applicant in the course of the negotiations.

Counsel for the Respondent has contested this Court's powers to review the decision of the Registrar by which the consent order being contested was entered, contending that the power of review of that order lies with the Registrar; as the Court which made it. I disagree. It is now settled law that the Registrar of Court only exercises such delegated powers as are provided for in the Civil Procedure Rules. The power to review orders, inclusive of orders made by the Registrar, is not among those delegated to the Registrar by the Civil Procedure Rules. Hence, for any such order, the law confers jurisdiction on a judge of the High Court to entertain an application seeking a review thereof. I accordingly overrule Counsel's objection as devoid of merit.

Because of the adversarial deposition by the parties hereto, and the explanation by the Applicant's former Counsel pursuant to my directive, on how the consent settlement was reached during the hearing before the Registrar Execution, I have perused the record of the proceedings before the Registrar Execution to establish exactly what transpired in Court. The Respondent with her Counsels, and the Counsel for the Applicant appeared before the Registrar Execution on the 24th September 2013, in response to the warrant of execution which had been issued against the Respondent as judgment debtor. Counsel for the Applicant/judgment debtor reported to Court that Counsel for the Respondent had proposed payment of U shs 10m/= to cater for costs of the suit and part of the decretal sum.

He also reported their agreement that the bailiff be paid the sum of shs. 2m/= as execution costs that very day upon sealing the consent; and that those proposals were acceptable to the judgment creditor on condition that sufficient security in

form of a title to a specified land and a log book of a specified motor vehicle was deposited with the bailiff, for the recovery of the decretal sum with interest thereon. Counsel for the Respondent/judgment debtor however reported the Respondent's inability to provide the security proposed; and instead named two guarantors as the proposed security. Counsel for the Applicant however reported that the Applicant was not comfortable with the proposed security, and instead proposed that the Respondent's Counsels should be the guarantors.

After these submissions to Court by the parties' Counsels, the learned Registrar Execution stated as follows: –

"Court: – I have carefully listened to the submissions of both Counsel and I have established that the Judgment debtor has exhibited the will to pay the decretal sum. She has produced 2 guarantors in Court and in view of the above she is hereto allowed to deposit 10,000,000/= towards the decretal sum plus costs and 2,000,000/= towards the execution costs and thereafter to be paying 3,000,000/= per month till payment in full. I so order."

This is what the consent settlement embodies, signed by the Counsels, the bailiff, and the Respondent's two guarantors, and sealed by the Registrar. It is manifest from the record reproduced above, that Counsels were still engaged in an inchoate stage of submissions, when the learned Registrar Execution made the ruling reproduced herein above. The parties never reached any consent settlement at all. A Registrar of the Court has no jurisdiction to vary the terms of a decree of the trial Court. This is the purview of the trial Court on review, or an appellate Court. Alternatively, the parties to the suit may consent and vary a Court decree, or the mode of its satisfaction.

By reason of the foregoing, there is justification in the Applicant's objection to the consent settlement purportedly made in her name. It is quite apparent, from the record, that her previous Counsel was more interested in having his costs, other

than the interest of the Applicant, covered. Furthermore, on the evidence, the bailiff had not executed the warrant issued to him as the Respondent was reportedly in perpetual hiding. The award of shs. 2m/= to the bailiff, as his costs of execution was therefore unjustified. A bailiff is not entitled to the award of costs by the mere issuance of a warrant to him or her for execution. The bailiff must first do some work pursuant to the warrant; then file a bill of costs, as proof of that work, to be taxed. It is what has been taxed, and allowed, that the bailiff is entitled to.

In the event, I find that the application before me is well founded; and therefore, I allow it; and do set aside the impugned consent settlement. Accordingly, I hereby direct the Registrar Execution to proceed with the process of execution of the decree of the trial Court, as ordered therein, without any variation. I award the costs of this application to the Applicant.



Alfonse Chigamoy Owiny – Dollo

JUDGE

20 – 02 – 2015