

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(EXECUTION & BAILIFFS DIVISION)
MISC. APPLICATION No. 358 OF 2014
(Arising from EMA No. 0028 of 2014; arising from Commercial Court Civ. Suit No. 618 of 2013)

LUCY MIWANDA..... APPLICANT/OBJECTOR

VERSUS

1. KAKEETO DEUSDEDIT
2. SEMAGANDA PHILLIP ::::::::::::::::::::::::::::::::::::::: RESPONDENTS
3. BATUME AUCTIONEERS

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

RULING

This application, brought under the provisions of Article 126 of the Constitution of Uganda, section 98 of the Civil Procedure Act, and 0.22 rr. 55, 56, and 57, and as well, 0.52 r.1 of the Civil Procedure Rules, moves this Court; seeking orders that: –

- (1). The property comprised in Plot 2E Nyonyintono Road Naguru, otherwise known as Signatures Suites (and hereafter known the suit property), be released from attachment in execution of the decree in Commercial Court Civil Suit No. 618 of 2913.
- (2). Sale of the suit property, as has been advertised be stayed and or postponed pending investigation and or final disposal of this application by Court.
- (3). Costs of this application be provided for.

The grounds of objection, which are also set out in the affidavit of the Applicant, sworn in support of the application, can be summed up that: –

- (i). The suit property, which is under attachment and has been advertised for sale in satisfaction of the decree in H.C.C.S. (Comm. Div.) No. 618 of 2013, is the property of and belongs exclusively to the Applicant.

- (ii) The Applicant was, at the time of the attachment objected to, the exclusive proprietor, and in possession and control, of the suit property.
- (iii) The Applicant was not a party to the suit wherein the Court decree, now being executed, was issued; and the Applicant is not indebted to any of the parties to that suit.

The background to the application is that the 1st Respondent had sued the 2nd Respondent in the head-suit wherein he obtained the decree now sought to be executed by sale of the suit property. In her affidavit, the Applicant deponed to the facts of her proprietorship of the suit property right from the time when she was an unregistered proprietor thereof to the time when she obtained a lease from the predecessor to Kampala City Council Authority. She attached documentary evidence of the lease to her, as well as approved building plans for the developments on the suit property, in her name. The Respondents caused affidavits to be sworn in reply thereto; contesting her proprietorship and possession of the suit property at the time of the attachment.

Counsels for the two sides filed written submissions as directed by Court. Counsel for the Applicant raised a preliminary point of objection to the affidavits sworn by Counsel for the 1st Respondent, and the Local Council leader of the area the suit property is located in. The contention in the preliminary objection is that these are not parties to the suit; and so, they cannot swear affidavits in reply. I am unable to find merit in this objection. A party can bring anyone whom in the opinion of the party has evidence, which would bolster his or her case. In any case, the rules of procedure only frown against late filing of affidavits, outside specified time, but without seeking leave of Court. This is not the case here. I therefore overrule the preliminary point of objection in issue.

The principle of law upon which an objector application is determined is now settled. The Court is enjoined to determine whether it was the objector, or the judgment debtor, in possession of the suit property at the time it was attached. If the judgment debtor was in possession, then the execution of the warrant must continue. However, if it was in the possession of the Objector, then the Court has to determine whether the Objector had such possession on his or her own account, or on behalf of the judgment debtor. If the Objector was in possession in his or her own right, the Court must release the property from attachment forthwith. However, if it was on behalf of the judgment debtor, then it was the judgment debtor who had legal possession; hence, the attachment in execution of the warrant stands.

In the instant case, the objector claims that the judgment debtor was merely her employee, tasked with the management of the suit property on her behalf. She adduced documentary evidence, from the lease to her to the approval of the building plan, in proof of her exclusive proprietary interest in the suit property. Against her documentary evidence of proprietary interest in the suit property, the Respondents have only adduced oral evidence from Counsel for the judgment creditor, and the L.C. Official of the area where the suit property is located. This is evidence, which cannot stand in the face of the cogent evidence adduced by the Applicant/Objector. Even the contention by the Respondents that at the time of the attachment, the lease of the suit property to her had expired, hence, she no longer had any subsisting claim to the suit property, does not hold any water.

Where an initial lease expires after the lessee has developed the leased land, the law protects such a lessee because the lessee retains equitable interest in such land. In the instant case, the uncontroverted evidence is that the Applicant/Objector was the lessee of the suit property. The building plan for it was approved in her name; and a high value development was made on the property in accordance with the plan. Furthermore, a lease that expires reverts to the lessor; and the judgment debtor was not the lessor of the suit land. Worse still, the memorandum of understanding executed by the judgment creditor and the judgment debtor, purporting to vest the suit property in the former, was done during the pendency of the expiry of the initial lease of the suit property to the Applicant/Objector.

I am satisfied, on the evidence, that the Applicant/Objector had legal possession of the suit property at the time of the attachment; with the judgment debtor occupying it on her behalf. In accordance with the provisions of Order 22, rule 57, of the Civil Procedure Rules, I have no alternative, but to release the suit property from attachment; which I hereby do. I therefore allow the application; with costs to the Applicant/Objector, payable by the 1st and 2nd Respondents.



Alfonse Chigamoy Owiny – Dollo
JUDGE

13 – 03 – 2015