

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

MISC. APPLICATION No. 699 OF 2015
(Arising from EMA No. 3087 of 2014; arising from H.C.C.S. No. 373 of 2014)

GRACE OFWONO } APPLICANT

VERSUS

M/s POLAND UGANDA LTD. RESPONDENT

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

RULING

This application seeks Court order nullifying and setting aside the sale of the Applicant's property comprised in Kyaddondo Block 244, Plot 7778 at Kisugu (herein after referred to as the suit property); and that provisions be made as to costs. The salient grounds for the application, which are better set out in the Applicant's affidavit sworn in support of the application are that: –

1. The sale of the suit property was done without a certificate of title, or, in the alternative, a special certificate of title being lodged in Court.
2. The suit land was erroneously sold in execution as it is co-owned by the Applicant, and one Kuteesa Phillip who was not a party to the head suit.
3. The learned Registrar ordered for the sale of the suit property before the expiration of 30 (thirty) days indicated in the advertisement.
4. At the time of the sale of the suit property, the warrant of sale had expired; hence, there was no warrant to execute.

In the affidavit sworn by one Patel Bruhad, in reply to the application, he pointed out that the Kuteesa Phillip the Applicant alleged was a co-owner of the suit property, had in fact relinquished his interest therein to the Applicant. He deponed further that he had attached a photocopy of the certificate of title to the suit property in the application for warrant of execution. He contended that although the warrant of attachment had expired, the Registrar

Execution issued an order of sale, which formed the basis for the sale. I think this application can be resolved by determining the issue raised about the manner the sale of the suit property was carried out.

Section 48 (1) of the Civil Procedure Act empowers Court to order for the attachment of immovable property under a decree of execution; but provides that it shall not proceed with the sale until the duplicate certificate of title to the property attached has been lodged in Court. Subsection 4 of the said section provides that the Court may direct the Registrar of Titles to provide a special certificate of title for purposes of the execution, where the duplicate title is not forthcoming. In the instant case, the Court sanctioned the sale without even bothering to require the delivery of the duplicate certificate of title in Court. This was an act of non-compliance with, and grave contravention of, a very clearly mandatory provision of the law on how sale of immovable property under execution may be carried out.

The argument by Counsel for the Respondent, that the Respondent had provided a certified photocopy of the title to Court, and therefore the requirement of the law had been complied with, does not hold. A certified copy of certificate of title is not a certificate of title at all. It is only proof that the Register book contains what has been certified. Certificates of title are normally found in three forms; the Registry copy (or original copy), the duplicate copy (or owner's copy), and in the event that the duplicate copy is lost, then a special certificate may be issued to substitute the duplicate copy. The reason the law provides for the delivery of the owner's copy of the title is to ensure that upon sale, the new owner is availed such certificate of title; something, which a certified copy of the title would not do.

In *Kibuuka Nelson & Anor vs Yusuf Ziiwa, H.C. Misc. Applications No. 72 and 225 of 2008*, which is on all fours with the matter before me, Bamwine J. (as he then was), relying on the authority of *James Kabateraine vs Charles Oundo & Anor, HCCS No. 177 of 1994*, reported in *[1996] 1 KALR 134*, held that since the sale of the property attached under execution had been done without first having the duplicate certificate of title delivered in Court, '*the purported sale was no sale in law but a nullity*'; hence, the Court had the mandate to declare the sale invalid and make an order for restoration. On the effect of proceedings or acts, which are a nullity, the learned judge cited the case of *Macfay vs United Africa Co. Ltd. [1961] 3 All E.R. 1169*, where the Court clarified that: –

"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null, and void, without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."

Similarly, in *Rosemary Eleanor Karamagi vs Angoliga Malimoud, Misc. Applica. No. 733 of 2005*, where the certificate of title to the property attached in execution was not first deposited in Court before conducting the sale thereof, Kiryabwire J. (as he then was) nullified the sale stating that the elaborate procedure laid down in the rules for sale of immoveable property under execution had not been complied; hence, the sale was irregular and incurably defective. It is now well settled that sale of immoveable property, which is carried out without first having the duplicate or special title thereto deposited in Court, is incurably defective; and Court has the powers to declare so, and set it aside.

Since the sale of the suit property in the instant case was done in non compliance with the law governing sale of immoveable property attached in execution of a Court decree, I must declare it a nullity; and therefore set it aside. I find no need to delve in to the other grounds of appeal; except to point out that the Registrar Execution must always comply with every aspect of the rules governing execution to avoid this type of challenge now before Court. For instance, upon expiry of a warrant, or when sale does not take place on the appointed date, the rules in the Civil Procedure Rules clearly specify when the desired sale may be carried out without the need for fresh advert; and similarly, when a fresh advert must first be made before the sale.

In the event, I allow this application; and set aside the sale of the suit property. I award costs hereof to the Applicant. If the decree in the head suit herein has not yet been satisfied, then the Registrar Execution can commence the process of execution afresh; but in doing so, he/she must always bear in mind the imperative to comply with the strict laws and rules governing execution.



Alfonse Chigamoy Owiny – Dollo
JUDGE

09 – 03 – 2016