

Judge  
Copy

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(EXECUTIONS AND BAILIFFS DIVISION)**  
**MISC. APPLICATION NO. 1880 OF 2018**

**[ARISING FROM EMA NO. 1998 OF 2017 & HCCS NO. 19 OF 2017]**

1. JOSEPH RWABUKUKU MPANGO
2. NDORA KAGABA RICHARD
3. ATUHAIRE SCOVIA

**APPLICANTS**

**V**

**LETSHEGO (U) LTD**

**RESPONDENT**

**BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA**

**RULING**

**Representation:**

Ms. Nuru Nambirige for the Applicants.

Mr. Bukenya Abdulwahab for the 1<sup>st</sup> Respondent.

**Background:**

[1] The Respondent; Letshego (U) Ltd is the Decree holder in HCCS No. 19 of 2017 against Mr. Kaberinde Patrick; the Judgment –debtor.

Letshego applied for execution of that decree vide EMA No. 1998 of 2017, and obtained a warrant of attachment and sale of the property comprised in **Plot 6 Agaba Road, Fort Portal Municipality, Vol. 975, Foilo 23, measuring an area of**

*Masubwa 2011*

**0.118 Hectares, registered in Mr. Kaberinde's names with effect from July 22, 2011.** (Hereinafter referred to as the attached property).

- [2] The present application was brought by the Applicants/ Objectors under **Section 98 of the CPA and Order 22 Rules 55, 56 & 57 and Order 52 of the CPR**, in which they seek *inter alia*, that the attached property be released from attachment and sale and that the attachment be set aside.

The Objectors' case:

- [3] The gist of the objection to attachment as laid out in the Objectors' motion and supporting affidavit, supplementary affidavits and affidavit in rejoinder, is that;
- a) The attached property is not liable to attachment
  - b) The Objectors purchased the attached property from Mr. Kaberinde in February and October 2012 respectively, and have been in possession thereof. That they took possession of the suit property and in 2015 started construction and cultivation thereon.
  - c) At the time of the attachment, they were in possession of the attached property as owners.

The Respondent's (Letshego's) case:

- [4] The gist of Letshego's case as contained in its affidavit in reply is that;

*Masamba* 20/11.

- a) Mr. Kaberinde is the registered proprietor of the attached property which he offered Letshego as security.
- b) Bank Officials inspected the attached property and it was vacant, there was only an incomplete foundation and Mr. Kaberinde said he wanted a loan to complete the building.
- c) Letshego Valuers carried out a valuation (valuation report is dated April 2015) and confirmed that the attached property was vacant and gave Mr. Kaberinde a loan.
- d) If the Applicants had carried out a search, they should have seen that Mr. Kaberinde had a loan with KCB Bank as shown on the Certificate of Title.

A registered Mortgage takes precedence over the Applicants' unregistered interest.

Issue for determination:

- [5] Whether the attached property is liable to attachment?

Arguments of Counsel:

- [6] Learned Counsel for each party made oral submissions which I need not recapture here, but shall refer to in my analysis below.

*Masa Mh... 20/11*

**Analysis:**

- [7] For objector proceedings, **Order 22 Rules 56 & 57 of the Civil Procedure Rules** provides that;

'The Claimant or Objector shall adduce evidence to show that at the date of the attachment he or she had some interest in the property attached'

(Underlining added).

'Where upon the investigation under rule 55 the court is satisfied that from the reason stated in the claim or objection the property was not, when attached, in the possession of the judgment debtor or some person in trust for him or her, or in the occupancy of a tenant or other person paying rent to him or her, or that, being in the possession of the judgment debtor, at the time, it was so in his or her possession not on his or her own account or as his or her own property, but on account of or in trust for some other person, or partly on his or her own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment'

(Underlining added).

- [8] Ms. Nambirige learned Counsel for the Objectors argued that Mr. Rwabukuku (1<sup>st</sup> Respondent), purchased the attached property vide a sale agreement. That he made several deposits totaling to **UGX. 14,000,000/=** and constructed units thereon and took possession. That he lodged a caveat thereon and has approved plans by the Municipal Council.

Learned Counsel prayed that the attached property be released from attachment.

*Ms. Nambirige 20/11.*

[9] Ms. Nambirige further argued that Ndorwa (the 2<sup>nd</sup> Respondent) purchased part of the attached property vide a sale agreement and started cultivating it.

That by the time the loan was advanced to Mr. Kaberinde by Letshego, the objectors had long since purchased the attached property in 2012.

[10] In rebuttal, Mr. Bukenya, learned Counsel for Letshego argued that when the Bank officials inspected the attached property there was an incomplete structure and that Mr. Kaberinde (the Judgment debtor) wanted the loan to complete the building.

He further argued that the agreements furnished by the objectors were in respect of untitled land. That Njara cell 'A' is different from the attached property that was mortgaged by Mr. Kaberinde and that the agreements on both supplementary affidavits describe Mr. Kaberinde merely as a neighbour.

That the loan was obtained in 2015 and its purpose was to complete an incomplete structure. That the Objectors have no interest in the attached property and are neither in actual nor constructive possession thereof.

That if the structure presented by the Objectors is found on the attached property, then the principle that fixtures on the land belong to the owner of the land, applies.

[11] In rejoinder, Ms. Nambirige answered that there is no evidence of approved plans for the incomplete structure that Mr. Kaberinde showed Letshego, and therefore the allegations of ownership are baseless.

*Masukuwa 20/11*

That although Mr. Kaberinde was the registered proprietor of the attached property, the Objectors had equitable interests therein and have at all material times been in possession thereof and the same is therefore not liable to attachment.

[12] In my view, it is apparent that it is not in dispute that the Objectors are in possession of the attached property.

It was admitted by Letshego in paragraph 9 of its affidavit in reply, sworn by a one Agweu Moses Abraham (their debt collections Manager), that when Letshego officials went to look at the attached property, *'they found the Objectors building thereon'*. They however stated that the Objectors were building without Letshego's consent.

Letshego's said admission was further echoed by their lawyer Mr. Bukenya when he argued that as registered mortgagee, Letshego's interest takes precedence over the Objector's unregistered interest.

[13] Having satisfied myself that the Objector's are in possession of the attached property, I shall now determine whether their possession is on their own account, or is on the account of Mr. Kaberinde or otherwise?. (**Order 22 Rules 55, 56 and 57 of the CPR**).

[14] I note that there was a mortgage on the attached property in favour of KCB Uganda Ltd registered on May 16, 2012, which was released on April 23, 2015. (See annexure "A" to Letshego's affidavit in reply). Also see the agreed facts - sheet signed by the parties at the hearing of this application.

*Masamba* 20/1.

I further note that the mortgage in favour of Letshego was entered into on June 11, 2015, close to two months after the KCB Mortgage was released in April, 2015. See the mortgage deed (annexture "F" to the affidavit in reply by Letshego.

[15] I have also carefully read the valuation report dated April 7, 2015 which shows that indeed at the time of the valuation, there was an incomplete building on the attached property.

[16] From the above facts, **it is more probable than not, that the incomplete structure on the attached property was in fact Mr. Rwabukuku's building and not Mr. Kaberinde's.**

I have further taken the following into account;

- a) The Original approved plans for the incomplete structure on the attached property, which were produced and shown to this Court at the hearing of this application.
- b) The annextures to the supplementary affidavit of Mr. Rwabukuku by which he attached deposit slips for monies he claims to have paid into a KCB Bank Account stated to belong to Mr. Kaberinde.

Decision of this Court:

[17] In the result, I find on a balance of probabilities that the objectors have an interest in the attached property and are therefore in possession on their own account.

*Handwritten signature*

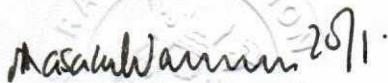
The question of who of the parties has a superior interest in the attached property is a matter that can only be determined at a full trial as provided for under Order 22 Rule 60 of the CPR.

[18] I accordingly allow these Objector's claims and Order as follows;

Orders of this Court:

1. The attachment of property comprised in **Plot 6 Agaba Road, Fort Portal Municipality, Vol. 975, Foilo 23**, vide EMA No. 1998 of 2017, is hereby set aside and the attached property is released from attachment.
2. The Respondent shall pay the costs of this application.

I so order.

 20/1

**P. BASAZA - WASSWA**

**JUDGE**

January 20, 2020

Ruling delivered on January 20, 2010 at 12:15pm at Kampala in the presence of

1. For the Applicants: *Ms. Nura Nambirize*
2. For the Respondent: *None*
3. Court Clerk: Ms. Aisha Nakimera.