

UGANDA / JUDGMENT

Balaaga v Muyimbwa (H.C.Miscellaneous Application No. 974 of 2021) [2021] UGCommC 106 (23 July 2021)

[2021] UGCommC 106

COURT

Commercial Court of Uganda

BEFORE

Gaswaga, J

CASE / FILE NUMBER

H.C.Miscellaneous Application No. 974 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION] M. A No. 974 of 2021 Arising from EMA No.221 of 2021
Arising from Civil Suit No. 813 of 2015 BALAAGA
NGAWANZU:::::::::::::::::::::::::::::::::APPLICANT VERSUS
MUYIMBWA ANDREW KAMYA:::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This is an exparte application for a 'Certificate of Urgency' brought by the applicant under Section 33 of the Judicature Act, Section 98 CPA, Order 52 rules 1,2 and 3 of the Civil Procedure Rules SI 71-1 and Rule 4 SI No. 13-20 (Judicature Court Vacation Rules) for orders that; *a certificate of urgency be issued to allow execution process proceed and that costs of this application be in the cause.* The application is supported by an affidavit of the applicant, Balaaga Ngawanzu which expounds on the grounds relied on and are briefly as follows;
 - *1. That a warrant of attachment and sale of immovable property was issued and it is still valid, yet the courts are now suspended due to covid-19 pandemic and the execution process cannot go ahead.*
- *i*
- 2. *That the judgment debtor was once committed to civil prison and failed to pay and he is likely or in the process of selling off the attached kibanja land.*

- *3. That since the court vacation is on the execution process can't go on without a certificate of urgency and that it is just and fair that this application is granted.*
- [2] According to rule 4 of the **Judicature (Court Vacation) Rules SI 13-20**.

"In vacation the court shall deal with criminal business but shall not sit for the discharge of civil business other than such civil business as shall, in the opinion of the presiding judge, be of an urgent nature."

- [3] After diligently perusing the pleadings on record and also Counsel's submissions, ^I note that the gist of the application is to grant leave for execution to take place by way of attachment and sale. As deposed in paragraph 5 of the supporting affidavit the execution is urgent as the respondent or judgment debtor is likely or in the process of selling off the attached Kibanja land. The law is to the effect that the burden lies on the applicant to prove such urgency. See **Societe Bisimaki Vs Damco Logistics and Anor, MC No.341 of 2013(2013) UGHCCD 97** wherein they cited with approval the case of **Noor Muhammed Vs Jaffery Wanami, Civil Revision No.02 of 2007**.
- [4] Be that as it may, one needs to note that the courts are still in court vacation yet there is an ongoing lockdown of the country imposed by His Excellency The President of the Republic of Uganda in order to curb the spread of Covid-19. Moreover, it is common knowledge that

executions of this nature (involving land evictions) usually attract the attention and the participation of many people, the use of force and more often than not turn chaotic, rowdy, sometimes leading to injuries and loss of property and human life. In this current situation of lockdown due to the Covid-19 pandemic where majority of the population is locked down in their homes and most offices, including the Police Force, are operating at 10% capacity, the much required security for such operations may not be guaranteed. The Covid-19 standard operating procedures, especially social distancing, may be breached thereby leading to further transmission and infections of Covid-19. This defeats the very purpose of the lockdown imposed by government. Therefore, in such circumstances, the courts should allow only and only extremely deserving cases to be executed.

- [5] It was for those reasons that the Chief Justice of Uganda vide **Rule 6 of the Chief Justice's circular dated 7th June 2021**, specifically forbade the conduct of executions during this period of forty two days lockdown. **Rule 7** thereof however provides for exceptions falling under the category of urgent matters. One would have been tempted to classify the applicant's case or situation as an urgent matter, therefore falling under Rule 7, but given that the attachment of the subject matter herein/suit land had already been done before court vacation, ^I am convinced that as feared by the applicant, even if the respondent were to sell the said land, the applicant will not be left without a remedy.

- [6] For instance, it would be open to the applicant to drag the respondent to court and charge him with contempt of a lawful court order. Besides, land is an immovable property and can therefore be recovered from the buyer once the court vacation and lockdown is concluded. In the

same vein, the applicant should be vigilant and lodge a caveat emptor in respect of the land in the newspapers, radio and television, and place a physical copy on the suit land as well. It would also be prudent for the applicant to alert the local authorities of the intended sale and how the said land is already under attachment.

- [7] For all or any of the above steps and or actions the applicant must ensure that the respondent is notified/ copied in. ^I say all this bearing in mind that the sale has not yet taken place as clearly intimated in the applicant's supporting affidavit. Finally, in case the applicant is not ready or willing or unable to employ any of the above steps or actions, he may feel free to apply for an injunctive order.
- [8] In conclusion, ^I find that this is not an urgent matter to merit the issuance of a certificate of urgency and be dealt with during court vacation and lockdown. The application is therefore refused.
- [9] Costs of this application are to be provided for.

^I so order.

Dated, signed and delivered at Kampala this 23rd day of July 2021

Duncan Gaswaga

JUDGE

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