

UGANDA / JUDGMENT

Imaniraguha v Uganda Revenue Authority (Miscellaneous Application 2770 of 2023) [2023] UGCommC 220 (4 December 2023) [2023] UGCommC 220

COURT

Commercial Court of Uganda

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Miscellaneous Application 2770 of 2023

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IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA COMMERCIAL DIVISION

Reportable Miscellaneous Application No. 2770 of 2023

In the matter between

JOHN IMANIRAGUHA APPLICANT**And****UGANDA REVENUE AUTHORITY RESPONDENT****Heard: 21 November, 2023. Delivered: 04 December, 2023.**

*Civil Procedure - functus officio rule - As a general rule, once a court has rendered a final decision, it is barred from reopening, varying or retracting its decision - exceptions - (1) to correct errors in drafting, (2) to correct errors in manifesting the express intention of the court, or (3) where allowed by statute on such matters as the court is given specific legislative authority to act - section 99 of The Civil Procedure Act - the slip rule - This power may be invoked where the decree does not correctly reflect the court's decision, as contained in its reasons stated in the judgment - If the omission sought to be corrected goes to the merits of the case, or seeks to clear an ambiguity in the decision, it is beyond the scope of this provision, for which the proper remedy for the aggrieved party is to file appeal or an application review - execution of decrees and orders - property liable to attachment and sale in execution of a decree is the "property belonging to the judgment debtor" or the property over which, or the profits of which, he or she "has disposing power which he or she may exercise for his or her own benefit"- Section 44 (1) of The Civil Procedure Act - property exempt from attachment includes any fund or allowance

declared by law to be exempt from attachment or sale in execution of a decree.*

Constitutional law - Judicial independence - decisional independence - The decisional independence of a judicial officer: the ability to interpret and apply substantive legal principles in the specific context of an individual adjudication, should be free from control or interference, not only by the legislative and executive arms, but also by judiciary administrators - it must *be preserved absolutely from internal administrative interference to preserve the integrity of judicial power. From a functionalist perspective, to allow judiciary administrators to interfere with an adjudication, to influence or direct the outcome in a pending case, or to alter a final judgment as between the parties, would constitute a breach of judicial independence - Decisional independence posits that a judicial officer should decide cases solely based on the law and facts that are applicable free from outside pressures or inducements, free of influence or control by other actors, whether governmental or private, without regard to political, administrative or popular pressure, without regard to the fact that there are some who would corrupt the judicial decision-making process for their own advantage, without regard to partisanship, fear or intimidation, or special interests - Judicial officers should not be afraid of the effect an unpopular but legally sound decision might have on their transfer, elevation, confirmation, promotion or appointment.*

RULING

STEPHEN MUBIRU, J.

Introduction:

[1] On 27th October 2023, the Learned Deputy Registrar issued a Garnishee *Order Nisi* in favour of the applicant for the recovery of a sum of shs. 26,261,323,709/= in Execution Misc. Application No. 641 of 2023 in respect of the respondent's Bank Accounts held by the Garnishee, Stanbic Bank Limited, i.e. account numbers 9030005950707, 9030005950820, 9030005762927 and 9030009654703. The Garnishee *Order Nisi* was returnable on 3rd November, 2023 and was duly served upon the bank on 27th October 2023 and later, upon the respondent on 30th October, 2023. On the same day, the Learned Deputy Registrar issued another order recalling the Garnishee *Order Nisi*, in the following terms;

> This is to IMMEDIATELY RECALL the GARNISHEE *ORDER NISI* issued in this Execution miscellaneous application No 641 of 2023 as directed by HON. THE PRINCIPAL JUDGE in a letter dated 27th October 2023.

The application.

- [2] The application by Notice of motion is made under the provisions of sections 82 and 98 of *The Civil Procedure Act*, section 33 of *The Judicature Act* and Order 46 rules 1 (a), 2 and 8 (as amended), of *The Civil Procedure Rules*. The applicant seeks orders that; (i) the Learned Deputy Registrar's Recall Order dated 30th October 2023 in Execution Misc. Application No. 641 of 2023 be reviewed and set aside; (ii) the Garnishee Order Nisi issued by the Learned Deputy Registrar on 27th October 2023 in Execution Misc. Application No. 641 of 2023 be reinstated; and (iii) the costs of the application be provided for.
- [3] It is the applicant's case that the Learned Deputy Registrar lacked jurisdiction on 30th October 2023 to recall the Garnishee *Order Nisi* earlier lawfully issued by her on 27th October 2023. She never accorded the applicant a hearing prior to the recalling of the Garnishee *Order Nisi*. The order is a nullity for lack of jurisdiction. These are errors apparent on the face of the record, sufficient to justify the grant of this application.

Submissions of counsel for the applicant;

- [4] Counsel for the applicant submitted that these proceedings are between the Judgment Creditor and the garnishee where the Judgment Debtor has no right of audience. The application seeks to correct the errors apparent on the face of the record committed by the learned Deputy Registrar of the court. The reason for the revocation is alluded to by the Deputy Registrar as being "as directed by the Principal Judge." The Registrar does not have power, the parties were never invited. The order was dated wrongly as well. This application is premised on grounds that the failure by the Learned Deputy Registrar to accord a hearing to the applicant as well as her exercise of jurisdiction not vested in her by law in purporting to recall the Garnishee *Order Nisi*, which are errors apparent on the face of the record, sufficient to justify the grant of this application.

The decision.

- [5] Review connotes a judicial re-examination of the case in order to rectify or correct grave and palpable errors committed by court in order to prevent a gross miscarriage of justice. According to section 82 of *The Civil Procedure Act*, any person considering himself or herself aggrieved; - (a) by a decree or order from which an appeal is allowed by the Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by the Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit. The person applying under that provisions needs only to be one whose interests, rights, or duties are inevitably adversely affected by the decree. The section does not impose any conditions on the exercise of that power.

- [6] In **Kinyara Sugar Ltd v. Hajji Kazimbiraine Mahmood and others*, H. C. Misc. Application No. 003 of 2020*, it was held that the Court's powers of review under section 82 of **The Civil Procedure Act** are wider than those under Order 46 of **The Civil Procedure Rules**. Under Section 82 of **The Civil Procedure Act**, it suffices that the applicant's interests, rights, or duties are adversely affected by the Decree or Order sought to be reviewed. The section does not impose any conditions whatsoever, on the exercise of Court's power thereunder.
- [7] However, Order 46 rules 1 of **The Civil Procedure Rules**, is not that wide. It empowers this court to review its own decisions where there is an "error apparent on the face of the record" or "discovery of a new and important matter of evidence," or "for any other sufficient reason," which has been judicially interpreted to mean a reason sufficient on grounds, at least analogous to those specified in the rule. For applications based on the first ground, the error or omission must be self-evident and should not require an elaborate argument to be established. This means an error which strikes one on mere looking at the record, which would not require any long-drawn process of reasoning on points where there may conceivably be two opinions (see **Nyamogo & Nyamogo Advocates v. Kago* [2001] 2 EA 173)*. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under order this Order and rule. In exercise of the jurisdiction under this provision, it is not permissible for an erroneous decision to be reheard and corrected.
- [8] The power of review vested in a High Court Judge extends to Orders made by a Registrar of the High Court (see **Attorney General and another v. James Mark Kamoga and another*, S. C. Civil Appel No. 8 of 2004*). However, an application for review, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise. A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. It may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of an appellate court.
- [9] An error apparent on the face of the record is one which is based on clear ignorance or disregard of the provisions of law. Such error is an error is one which is a patent error and not a mere wrong decision. Conclusions arrived at on appreciation of evidence cannot be classified as errors apparent on the face of the record. In a review it is not open to this Court to reappraise the evidence and reach a different conclusion, even if that is possible. The case of **Nyamogo & Nyamogo Advocates v. Kago* [2001] 2 EA 173* defined an error apparent on the face record, thus:

An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a

clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.

- [10] A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. A review should not seek to challenge the merits of a decision but rather irregularities in the process towards the decision. Some instances of what constitutes a mistake or error apparent on face of record are: where the applicant was not served with a hearing notice; where the court has not considered the amended pleadings filed or attachments filed along with the pleadings; where the court has based its decision on a ground without giving the applicant an opportunity to address the same; and violation of the principles of natural justice.
- [11] It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. That the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law is not a proper ground for review. Misconstruing a statute or other provision of law cannot be ground for review but could be a proper ground for appeal since in that case the court will have made a conscious decision on the matters in controversy and exercised his discretion in favour of the successful party in respect of a contested issue. If the court reached a wrong conclusion of law, in circumstances of that nature, it could be a good ground for appeal but not for review otherwise the court would be sitting in appeal on its own judgment which is not permissible in law. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in an application for review unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.
- [12] It is contended in this application that failure by the Learned Deputy Registrar to accord a hearing to the applicant as well as her exercise of jurisdiction not vested in her by law in purporting to recall the Garnishee *Order Nisi*, are errors apparent on the face of the record, sufficient to justify the grant of this application.
- i. The power to recall an order.
- [13] As a general rule, once a court has rendered a final decision, it is barred from reopening, varying or retracting its decision. The doctrine of *functus officio* (that is, having performed his office) holds that once the Court renders a decision regarding the issues submitted, it lacks any power to re-examine that decision. It is trite that once a Judge pronounces a decision in a matter, he/she becomes *functus officio* and cannot nullify it by a subsequent decision in a review or in any application (see *Bedwell v. Wood (1877) 2 QBD

626; Kamundi v. Republic [1973] EA 540; Laemthong Rice Co Ltd v. Principal Secretary Ministry of Finance [2002] 1 EA 119; East African Plans Ltd v. Roger Allan Bickford Smith [1974] HCB 97; Lule Esawu v. Yozamu Mugwanya [1978] 98; Akoko Dototia v. Sepererino Olanya [1978] HCB 115* and *Oliver Namyeka and two others v. Parliamentary Commission, C. A. Civil Appeal No. 59 of 2013*). Once a judgment or order is passed and entered or otherwise perfected according to the practice of the court, the court is *functus officio* and cannot set aside, vary or alter its order however wrong it may appear to be (see *Unnanse v. Unnanse [1950] AC 561*).

- [14] *Functus officio*, which translates from the Latin as "having performed his or her office," presents a general rule that a final decision of a court cannot be reopened. It is defined as being "without further authority or legal competence because the duties and functions of the original commission have been fully accomplished" (see *Black's Law Dictionary*, 682, 7th ed. 1999). A final decision of a court that is susceptible to appeal cannot be reconsidered by the court that rendered it. The court is not empowered to vary or change its regularly obtained judgment or order. That decision cannot be revisited because the court has changed its mind, made

an error within jurisdiction or because there has been a change of circumstances. In other words, once a formal judgment has been entered, a court loses jurisdiction and may only amend its judgment in very limited circumstances.

- [15] The doctrine is not without exception. It allows courts to revisit issues in three circumstances: (1) to correct errors in drafting, (2) to correct errors in manifesting the express intention of the court, or (3) where allowed by statute on such matters as the court is given specific legislative authority to act. Such circumstances include; setting aside *ex-parte* orders (see Order 9 rule 12 of *The Civil Procedure Rules*); review where there has been a discovery of new and important matter of evidence, a mistake or error apparent on the face of the record or for other sufficient reason (see section 82 of *The Civil Procedure Act*, Order 46 of *The Civil Procedure Rules* and *Tanitalia Ltd v. Mawa Handels Anstalt [1957] 1 EA 215*); correction of clerical and mathematical errors arising from omission or similar slips in drawing up the decision or errors in expressing the manifest intention of the Court (see section 99 of *The Civil Procedure Act*; Highway Furniture Mart Limited v. The Permanent Secretary and another [2006] 2 EA 94; East African Plans Ltd v. Roger Allan Bickford Smith [1974] HCB 97* and *Raichand Lakhamshi and another v. Assanand & Sons [1957] 1 EA 82*). A court may also, on a motion, vary or set aside an order procured by fraud or on the basis of facts arising or discovered after the order was pronounced (see *Takhar v. Gracefield Developments Limited and others [2019] 2 WLR 984* and *DJL v. The Central Authority (2000) 201 CLR 226 at para 35*).
- [16] What this means is that a Court cannot sit as an appellate Court over its decision; once it has decided a matter, it ceases to be seized of it, and it cannot re-open it for any purpose whatsoever except in appropriate and exceptional situations such as when the order; (a) was obtained by fraud or deceit; (b) was a nullity; (c) was given under a mistaken belief that the

parties consented to it; (d) was given in the absence of jurisdiction; (e) the proceedings adopted were such as to deprive the decision or order of the character of a legitimate adjudication; or (f) was rendered

with fundamental irregularity. However, on the other hand, an order should be an accurate record of the Court's findings and of the reasons for the decision. It should not normally be necessary for a party to bring an appeal to correct an error, if it turns out that the parties and the Court agree that there is an error and that a correction should be made.

- [17] An order obtained by fraud upon a court binds not such court, nor any other, and its nullity upon this ground. The fraud which vitiates an order is fraud going to its procurement, as distinguished from fraud relating to matters going to the merits. Generally speaking, only the most egregious misconduct, such as bribery of a judicial officer, or the fabrication of evidence by a party in which an advocate is implicated will constitute a fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court. It should be noted that the Court can recall its own order if the order is outcome of fraud.
- [18] Generally, a court has the inherent authority and duty to correct its records, at any time, to assure that they accurately reflect the court's actions. The authority to correct an order issued allows for rectification of inadvertent errors that would not prejudice any party's rights, but does not authorise the court to make substantive changes to it. An order cannot be corrected by bringing into the judgment a new matter which does not appear naturally to have been in the contemplation of the Court when the order was being written (see **Minja v. Tanzania Harbours Authority* [2005] 1 EA 271*). The fact that the original decision was wrong or made without jurisdiction or that there has been a change of circumstances, is irrelevant to the issue of **functus officio**. Additionally, an order may not be varied because the court finds it inequitable when made, nor because subsequent events or circumstances have caused the awards or liabilities to become inequitable. The court does not have flexibility to vary only those portions of an order that are materially affected by the circumstances leading the court to grant relief. Neither can the decision be

revisited because the parties have changed their mind regarding an appeal therefrom.

- [19] In the alternative, under section 99 of **The Civil Procedure Act**, clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties. This section not only allows the court to correct garbled or incorrect transcriptions, spelling and grammatical mistakes, and even matters of style, but also so that the reasons recorded accurately reflect why the court made the decision that it made, even if they were not then properly or fully articulated.

- [20] When a judgment is delivered (orally or in writing) the court on its own motion or parties or their advocates may ask the judge to correct phrases that are confusing or unclear, or minor factual points that have been accidentally misstated. This power may be invoked where the decree does not correctly reflect the court's decision, as contained in its reasons stated in the judgment. A slip rule amendment can be made at any stage to enable the court to properly reflect what was intended and to enable a fair resolution of proceedings, consistent with the interests of justice (see **Mellor v. Swire* (1985) 30 Ch D 239* and **IC v. RC* [2020] All ER (D) 74*).
- [21] Court has no powers to alter its own judgment except for the limited purpose of correcting clerical or mathematical errors (see **Erimiya Serunkuma v. Elizabeth Nandyose* [1959] EA 127*). A clerical mistake is a mistake of calculation, or a mistake in writing or typing, whereas an error arising or occurring from accidental slip or omission is an error due to careless mistake or omission on the part of the Court. There cannot be an amendment to any final order unequivocally made since the result of would be to trigger another process of adjudication (see **Moore v. Buchanan* [1967] 1 WLR 1341;* In **Re Inchcape* [1942] Ch 394* and **Tak Ming Co. Ltd v. Yee Sang Metal Supplies Co.* 1973 1 WLR 300*). Neither can the slip rule be used by a party to seek clarity of a judgment but only to correct minor errors. If the

omission sought to be corrected goes to the merits of the case, or seeks to clear an ambiguity in the decision, it is beyond the scope of this provision, for which the proper remedy for the aggrieved party is to file appeal or an application review.

- [22] The slip rule has three features; first, the rule is not directed to pure omissions, i.e. something that the Judge meant to do but by some oversight he or she forgot to do. Secondly, the slip is in the nature of a "clerical or typographical" error. This betokens an error in expression or calculation of something contained within the decision, not an error going to the reason or intention forming the basis of that decision. Such slips might include an arithmetical error in adding or subtracting sums, mis-transposing parties' names, a slip in carrying over a calculation from one part of the decision to another or, as here, the mistaken insertion of a rogue number. Thirdly, it is this kind of slip (clerical or typographical) that is as a result of "accident or omission."
- [23] This, too, points to correction of slips or mistakes in expression, rather than changes to the reasoned or intended basis of the decision (see **NKT Cables A/S v. SP Power Systems Ltd* [2001] All ER (D) 74*). It is not a warrant to correct what are more substantive errors, in the sense of a mistake of fact or law, is it a warrant to correct a pure omission, being something that the Judge intended to include or take account of but which he or she has wholly omitted to in reaching his or her decision.
- [24] This provision only covers genuine slips or omissions in the wording of a handed down judgment which were made by accident, e.g. the misdescription of a party or the incorrect insertion of a date. The slip rule is only applicable to give effect to the court's thoughts or

intentions at the time of making the order and not additional thoughts arising after it is handed down. It cannot be used to correct substantive mistakes, for example an error in law. It cannot be invoked to add a provision having substantive effect which was not in the contemplation of the parties or the court at the hearing. Substantive errors can only be corrected through the appeal

process. Due to the **functus officio** doctrine, the court has no power to correct substantive errors concerning the decision itself (i.e. a mistake of its own in law or otherwise) even if they are apparent on the face of the judgment. In those circumstances, the remedy would lie in the appeal process.

- [25] What gives the court jurisdiction under this provision is that the slip or omission was accidental, and not due to a mistake or error of the court or a party or any misunderstanding. Its real purpose is to ensure that the judgment conforms to what the court intended. The key requirement in every case is simply that the order should reflect the actual intention of the court. The rule applies only to situations where if the amendment requested was not effectuated, the original order would not represent the intended order of the court. The slip rule can be applied only where the proposed amendment is one about which no real difference of opinion can exist. Counsel for the applicant has not demonstrated that there was such an accidental slip or omission.
- [26] It is clear that, both under the inherent powers and under the slip rule, the Court's jurisdiction is circumscribed and must not be invoked to circumvent the principle of finality of the Court's decisions (see **Orient Bak Limited v. Fredrick Zaabwe, S. C. Civil Application No.17 of 2007**). It is trite that an order of Court takes effect from the day it is pronounced, hence the requirement in Order 21 rule 6 (1) of **The Civil Procedure Rules** that the decree should agree with the judgment. The order has to be dated as of the day the ruling is delivered and not necessarily the day it is signed, though more often than not the two are done at the same time. It follows that in dating the order 27th November, 2023 when the ruling was actually delivered on 27th October, 2023, the order suffered a slip (clerical or typographical) that was as a result of "accident or omission" which could be corrected **proprio motu** by the Court under section 99 of **The Civil Procedure Act**.
- [27] However, the reason given by the Learned Deputy Registrar for recalling the order is not that there had been a slip in dating the order, but rather that she had been

"directed by Hon. The Principal Judge in a letter dated 27th October, 2023," to do so. If this be true, it presents a **prima facie** affront on decisional independence as a key element in the exercise of judicial power which, if accepted in future cases, would constitute a significant dilution of the protection afforded to decisional independence.

- [28] The decisional independence of a judicial officer: the ability to interpret and apply substantive legal principles in the specific context of an individual adjudication, should be free from control or interference, not only by the legislative and executive arms, but also by judiciary administrators. Decisional judicial independence involves such a fundamental or

core judicial function that it must be preserved absolutely from internal administrative interference to preserve the integrity of judicial power. From a functionalist perspective, to allow judiciary administrators to interfere with an adjudication, to influence or direct the outcome in a pending case, or to alter a final judgment as between the parties, would constitute a breach of judicial independence, a doctrine so fundamental that it would seriously undermine the very integrity and independence of the judicial power. There is need to maintain the courts' decisional independence in the face of administrative power. The impugned letter by the Principal Judge to the learned Deputy Registrar effectively directs an outcome of a judicial adjudication in a specific case.

- [29] Decisional independence posits that a judicial officer should decide cases solely based on the law and facts that are applicable free from outside pressures or inducements, free of influence or control by other actors, whether governmental or private, without regard to political, administrative or popular pressure, without regard to the fact that there are some who would corrupt the judicial decisionmaking process for their own advantage, without regard to partisanship, fear or intimidation, or special interests. Judicial officers should not be afraid of the effect an unpopular but legally sound decision might have on their transfer, elevation, confirmation, promotion or appointment. Unless decisional independence is guaranteed, this would create a temptation for judicial officers to make decisions

based on how it would be perceived by those in power from time to time without regard for the law.

- [30] The Judicial officers' duty is to apply the law as he or she understands it. Upon entry of a final decision of Court, a disappointed litigant may attack the decision in several ways. If a higher court has jurisdiction to hear the case, he or she may launch a direct attack through appeal. Alternatively, he or she might file an application, attempting to squeeze the case into the exceptions to the **functus officio** rule, before the same Court which made the decision, but should not seek to upset the decision by administrative edict. A judgment or order of Court cannot be changed by administrative edict. Therefore, it is an error apparent on the face of the record when the learned Deputy Registrar succumbed to an administrative edict to recall the Garnishee **Order Nisi**.

ii. The validity of the attachment.

- [31] Apparently, by virtue of the letter she cited in her decision, the learned Deputy Registrar was led to believe that the funds attached by virtue of the Garnishee **Order Nisi** were exempted from attachment. Section 44 of **The Civil Procedure Act** prescribes the property which can and cannot be attached in execution. Several types of property are liable for attachment and sale in execution of a decree like lands, houses or other buildings, goods, money, banknotes, checks, bills of exchange, government securities, bonds or other securities etc., "and all other saleable property, movable or immovable, belonging to the judgment debtor, or over which or the profits of which he or she has a disposing power which he or she may exercise for his or her own benefit, whether the property be held in the

name of the judgment debtor or by another person in trust for him or her or on his or her behalf."

- [32] In short property liable to attachment and sale in execution of a decree is the "property belonging to the judgment debtor" or the property over which, or the

profits of which, he or she "has disposing power which he or she may exercise for his or her own benefit." The question then is whether the funds of the Judgment Debtor maintained on bank accounts opened in accordance with section 15 of *The Uganda Revenue Authority Act*, is "property belonging to the judgment debtor" or property over which it "has disposing power which hit may exercise for its own benefit."

- [33] Section 44 (1) of *The Civil Procedure Act* exempts the following items from attachment and sale in execution of decree for the recovery of money;
- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment debtor and of his wife and children and such personal ornaments as in accordance with religious usage cannot be parted with by any woman;
- (b) tools of artisans and where the judgment debtor is an agriculturalist, such implements of husbandry and such livestock and agricultural produce not exceeding in value five hundred shillings as may, in the opinion of the court, be necessary to enable him or her to earn his or her livelihood;
- (c) books of accounts;
- (d) a mere right to sue for damages;
- (e) any right of personal service;
- (f) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund as the Minister may, by statutory instrument, specify in this behalf, and political pensions;
- (g) the salary of any public officer, servant of a railway company or local authority, or any person privately employed to the extent of—
- (i) The whole of the salary, where the salary does not exceed forty shillings monthly;
- (ii) forty shillings monthly, where the salary exceeds forty shillings and does not exceed eighty shillings monthly; and
- (iii) One moiety of the salary in any other case;
- (h) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (i) A right of future maintenance;

- (j) Any fund or allowance declared by law to be exempt from attachment or sale in execution of a decree,
- [34] By law, exempt funds cannot be attached, seized, garnished or by other process taken, appropriated or applied to pay any debt or liability of the seller, buyer,

beneficiary or performer by any legal or equitable process or by operation of law, or to satisfy a money judgment. Exempt funds include public assistance, social security, disability, unemployment, retirement, and veterans' benefits; and alimony, child support, and some insurance payments.

- [35] Section 44 (1) (j) of *The Civil Procedure Act* exempts any fund or allowance declared by law to be exempt from attachment or sale in execution of a decree. This includes; trust funds which cannot be attached because they belong to other people and are not liable to attachment to answer the liabilities of the Administrator General (see *A*dmistrator General v. Kakooza Umaru and another* H. C. Misc. Application No. 11 of 2017*); provident fund for non-pensionable servants in the service of local governments (see section 7 (1) of *The Provident Fund (Local Governments) Act*); no execution or attachment or process in such nature may be issued out of any court for enforcing payment by a Local Government of any money or costs against its fixed assets and statutory transfers provided the execution or attachment may be made against any other property after six months from the date of judgement, order or decree (see section 7 (2) of *The Local Governments Act* as amended by Act 13 of 2001); no execution or attachment or process in the nature of an execution or attachment may be issued out of any court for enforcing payment by the Government (see section 19 (4) of *The Government Proceedings Act*), etc. Funds deposited in accordance with section 15 of *The Uganda Revenue Authority Act*, are not exempted.
- [36] According to section 15 of *The Uganda Revenue Authority Act*, the funds of the Judgment Debtor consist of; - (a) money appropriated by Parliament for the purposes of the authority; (b) loans or grants received by the authority with the approval of the Minister; and (c) any other monies as may, with approval of the Minister, be received by or made available to the authority for the purpose of performing its functions. The expenditure of the Authority is a charge on the Consolidated Fund. In contrast, the Consolidated Fund is established under article 154 (3) of *The Constitution of the Republic of Uganda, 1995*. It is the fund into

which is paid all revenues or other monies raised or received for the purpose of, or on behalf of, or in trust for the Government.

- [37] An account styled "the consolidated fund account" is kept with such bank or banks as the Treasury from time to time determines, and all sums standing to the credit of or paid into such account form part of one Consolidated Fund (see section 30 of *The Public Finance Management Act 3 of 2015*). The management of the Consolidated Fund is entrusted to the Secretary to the Treasury (see section 11 (2) (f) of *The Public Finance Management Act 3 of 2015*) and not the Judgment Debtor. No monies may be withdrawn from the Consolidated

Fund unless the withdrawal has been approved by the Auditor General and in the manner prescribed by Parliament (see article 154 (3) of *The Constitution* and section 32 (1) of *The Public Finance Management Act 3 of 2015*).

- [38] Statements showing payments into and issues from the consolidated fund account are rendered by every bank at which such an account is maintained to the Accountant General or the Auditor General at such intervals and in such form as they may direct (see section 33 (10) of *The Public Finance Management Act 3 of 2015*), and not to the Judgment Debtor. At the close of a financial year, the unexpended balance of any monies withdrawn from the Consolidated Fund are surrendered to the Consolidated Fund (see section 26 (11) of *The Public Finance Management Act 3 of 2015*).
- [39] Both the Court and the garnishee are required to verify that no exempt funds are in an account before issuing or honouring a judgment creditor's attachment or execution. A judgment creditor may not take any funds from accounts containing any exempt funds unless a court orders it. Stanbic Bank Limited account numbers 9030005950707, 9030005950820, 9030005762927 and 9030009654703 in the name of the Judgment Debtor, have been the subject of garnishee proceedings in previous litigation, such as; *National Social Security Fund v. Uganda Revenue Authority, EMA No. 641 of 2023* and *Biira Undear Co. Ltd. v. Uganda Revenue*

Authority and Stanbic Bank, H. C. Misc. Application No. 126 of 2023. They were not part of the consolidated fund then and there is nothing to show that they have since transformed into parts of it.

Order:

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[40] This application therefore succeeds. The Order recalling the garnishee order is accordingly set aside. Consequently, the learned Deputy Registrar should forthwith re-issue the Garnishee *Order Nisi*. The costs of this application are to form part of the costs of recovery of the decretal sum.

> Stephen Mubiru Judge.

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Appearances;

For the applicant : M/s Tumusiime, Kabega & Co Advocates.

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Prepared on 13 October 2026 · Esheria