

UGANDA / JUDGMENT

Kibale District Local Council v Katongole (MISC. APPLICATION NO. 058 OF 2024) [2025] UGHC 237 (31 January 2025) [2025] UGHC 237

COURT
High Court of Uganda

BEFORE
Byaruhanga Rugyema, J

CASE / FILE NUMBER
MISC. APPLICATION NO. 058 OF 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

MISC. APPLICATION NO. 058 OF 2024 (Arising from HCT-16-CV-CR-N0.0010 OF 2023) (Arising from HCCA No34 of 2015 and C. S No.0028 of 2008)

KIBAALE DISTRICT LOCAL COUNCIL ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

BENEDICTO KATONGOLE alias

OMUKWENDA KATONGOLE ::::::::::::::::::::::::::::::::::: RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- [1] This is an application brought under Ss.33 & 98 CPA and O. 44 rr.1& 2, O.52 rr.1 & 2 CPR seeking court's orders for leave to be granted to the Applicant to enlarge time to lodge an appeal against the Ruling dismissing the Applicant's Review application in HCCR No.10 of 2023 and stay of execution of the Ruling and Judgment passed by this court pending the disposal of the instant application and the appeal.
- [2] The grounds of the Application are set forth in the affidavit in support of the application deposited by Mr. Patrick Kabuubi Ahaisibwe, the Chief Finance Officer of the applicant and opposed by an affidavit deposited by Benedicto Katongole, the Respondent.

Preliminary objection

- [3] Counsel for the Respondent, **Mr. Andrew Kahuma of Ms Kahuma & Co. Advocates, Kampala** raised an objection to the effect that the Application is filed in bad faith, an abuse of court process and is intended to waste court's time or frustrate satisfaction of the decree of court for none service upon the Respondent.
- [4] Counsel for the Applicant **Mr. Godfrey Mutebi**, did not respond to this objection. Indeed, upon perusal of the Application, I find that, it was filed on 18/9/2024 and endorsed by the Registrar of this court on 19/9/2024 fixing it for hearing on 13/12/2024 at 11:00am. The entire record does not have anything to show in form of any affidavit of service that the application was served upon the Respondent. Counsel for the Respondent submitted that the Respondent learnt about the application through his own vigilance and filed an affidavit in reply on 13/12/2024, over 2¹/₂ months from the time the application was endorsed by the Registrar of this court and fixed for hearing.

[5] Under O.52 r.2 CPR,

"No motion shall be made without notice to the parties affected by the motion; except that the court, if satisfied with the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief,...."

It is now trite that Applications, whether by chamber summons or Notice of Motion and or Hearing Notices, are by law required to be served following after the manner of the procedure adopted for service of summons under O.5 r.(2) CPR, see **Fredrick James Junju & Anor Vs Madhivan Group Ltd & Anor**, HCMA No.688 of 2015 and **Amdan Khan Vs Stanbic Bank (U) Ltd** HCMA No.900 of 2013 in which both courts followed the supreme Court decision in the case of **Kanyabwera Vs Pastori Tumwebaze** [2005] 2 E. A 86.

- [6] O.5 r.2 CPR provides for the time limit within which summons must be served on the opposite party thus:

> *"Service of summons.....shall be effected within twenty one days from the time of issue, except that time may be extended on application to the court, made within fifteen days after the expiration of the twenty one days, showing sufficient reasons for*

the extension."

Rule 8 thereof provides that that where service has not been effected within the twenty one days from the date of issue and there is no application for extension of time under **subrule (2)** of the rule, the suit is to be dismissed without notice, see also **Bitamisi Namuddu Vs Rwabuganda Geoffrey**, SCCA No.016 of 2014 [2018] UGSC 53.

- [7] The entirety of the above is to underscore the fact that no application is to be made without notice to the party affected by the motion and timelines are stipulated within which to do so. In the instant case, the application was not served upon the Respondent as required

under O.5 r.3 CPR. In **M. M Sheikh Dewood Vs Keshwala & Sons, HCCS No.14 of 2009**, it was held that the consequences of non-service of summons as provided in O.5 r.3 CPR also applies to non-service of applications. In the premises, I find that since this application was not served upon the Respondent, it is accordingly dismissed for non-service with costs to the Respondent. It is not necessary for this court to go into other issues raised in this application. In any case, the issues like limitation and a wrong party being sued, the Applicant ought to have raised them in the main suit or reserve them for adjudication by the Appellate court and not for this court in the present application.

- [8] However, as I take leave of this application, I note that the Respondent proceeded to execute the decree and orders of this court by garnishee under O.23 CPR and the Registrar of this court issued a garnishee order nisi on 5/9/2024. The sealing of this nisi to absolute was however fettered by the present application which has nevertheless been dismissed. On record, there is a complaint by the Respondent Chief Administrative Officer dated 7/1/2025 to the effect that the funds on the Account held by the Respondent which has been affected by the garnishee order were dispatched to the Respondent District Local Government on

12/11/2024 long after the Garnishee order nisi had been issued by court, for support to **Groups under Micro Project Support Program FY 2023/2024** as per the correspondence to the Chief Administrative Officer from the Permanent Secretary, Office of the Prime Minister dated 12/11/2024. In this particular case, the funds are for the benefit of **Kikonge Cotton Nursery Operator and Kyanyi Cocoa Farmers Groups, Kibaale District**.

- [10] Against this background, it is apparent that the Respondent Local Government cannot be able to account for the funds and when the Government of Uganda's budget system expires on 30th June this financial year. As is the known practice, any unutilized funds for whatever reason must be transmitted back to the Uganda Consolidated Fund. In the premises that those funds were intended to support groups in the district as beneficiaries, the attachment of this account deprives these groups the benefit of the funds.
- [11] From the foregoing, I find that in the event of the garnishee nisi being sealed absolute whereby the funds shall end up to satisfy the decree of the Respondent, it may be construed as an act of sabotage of Government programme since the funds would have been directed to the Respondent who is not the intended beneficiary of the same. It is also apparent to me that execution of orders against Government Agencies and District Local Governments and in particular, attachment of debts through garnishee proceedings is becoming problematic. The communication from the **Attorney General of Uganda** [the principal legal advisor of Government under Article 119(3) of the Constitution] to the **President of Uganda Court Bailiffs' Association** dated 19/5/2022 highlights the problem. It is to the effect that **Rule 15 of the Civil Procedure (Government proceedings) Rules** prohibits such applications. The communication concludes that any execution of court decisions has to be covered under

the Government budget or Government plan for revenue and expenditure for a financial year.

- [12] The above communication is yet to be a subject of litigation before courts (at least I have not come across any) so as to have a legal pronouncement on the same but it poses a real dilemma on the ground in as far as execution against Government Agencies and Local Governments. The funds under the threat of attachment were received and are being held by the Respondent for the benefit of the groups in the district under the **Micro project support programme**. In effect, to attach these funds for satisfaction of the Respondent's debts does amount to diversion of the money because the funds do not belong to the Respondent. As a result, I find that it is unjust for these funds to be used to satisfy the decree in favour of the Respondent for to do so, is certainly detrimental to the actual beneficiaries of the funds in the district.
- [13] In the unique circumstances of this case, though the present application has been dismissed, in view of the problematic realities of execution against Government Agencies and District Local Governments which I have alluded to above, in the interests of justice, I do set aside the Garnishee Nisi so as to save the attached funds that were intended for the benefit of the District Groups as directed by the Permanent Secretary, Office of the Prime Minister. The Respondent shall remain at liberty to attach any other property or consider any other form of execution against the Respondent for satisfaction of his decree.

Order accordingly.

Dated at Hoima this 31st day of January, 2025.

..... Byaruhanga Jesse Rugyema Judge

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