

UGANDA / JUDGMENT

Kiggundu v Kaddu (Miscellaneous Application 1515 of 2023) [2024] UGHCFD 31 (1 July 2024)

[2024] UGHCFD 31

COURT

HC: Family Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

Miscellaneous Application 1515 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA

(FAMILY DIVISION)

MISCELLANEOUS APPLICATION 1515 OF 2023

5 (ARISING OUT EMA NO. 0024 OF 2023 AND DIVORCE CAUSE NO. 0002

OF 2018)

ERICK KIGGUNDU=====APPLICANT

VERSUS

TEDDY KYEYUNE KADDU=====RESPONDENT

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA

RULING

Introduction

This is a Ruling in respect of an Application by Notice of Motion (*ex parte*) for

- 15 Orders that:
- (a) The suit property comprised in Kyadondo Block 246 Plot 1635 land at Bukasa, Kyeitabye be released from attachment, eviction and sale;

- (b) The intended eviction of the Applicant be set aside and stayed pending the determination of the Appeal pending before the Court of Appeal; and
- 20 (c) The costs of this Application be provided for.

Representation

When the Application came up for hearing, the Applicant was represented by Mr. Isaac Isabirye holding brief for Mr. Charles Serunjogi from Solace Advocates. The

25 Respondent was represented by Mr. Lasto Byabakama from Tamale & Co. Advocates.

Background of the Application

A detailed background to this case was given in Divorce Cause No.0002 of 2018 and repeated in Miscellaneous Application No. 086 of 2023 arising from the Divorce Cause. Therefore, I will not repeat the same in this Application but it is worth reading 5 so as to appreciate the context of this Application. (See the decisions in those matters).

The Application

This Application is supported by the Affidavit of the Applicant, Mr. Erick Kiggundu.

- 10 The Respondent did not file an Affidavit in Reply. When the matter came up for hearing, Mr. Blasto Byabakama, who was in Court representing the Respondent in other Applications related to the subject matter informed the Court that he had not been served with this particular Application. Still, he had had an opportunity to peruse through while in the Courtroom. Upon perusal, he formed a mind that the
- 15 Respondent was not going to make an Affidavit in Reply because the reliefs sought in this Application were the same as what were being sought in *MA 0074 of 2024: Erick Kiggundu versus Teddy Kyeyune Kaddu* to which the Respondent had filed an Affidavit in Reply and which had also come up before the Court on that day. Besides, Counsel stated that the Applicant did not intend to have a Reply from the
- 20 Respondent because he clearly stated that it was *ex parte*.

The gist of the Affidavit in Support of the Application is that the Applicant and his family are in possession of property comprised in Kyadondo Block 246 Plot 1635 land at Bukasa, Kyeitabye which he purchased on 17th November 2017 from Johka 25 Print Machinery. The Applicant further averred that Divorce Cause No. 0002 of 2018 which made a finding on the ownership of the suit property was determined without giving him an opportunity to be heard.

That the Applicant filed an Application for review of the Judgment in Divorce Cause No. 0002 of 2018 Vide Miscellaneous Application No. 0542 of 2023 which was dismissed and he has since filed a Notice of Appeal against the dismissal and he is awaiting a Record of Proceedings. He further averred that there is an Order of the

5 Court for the attachment and sale of the suit property and if the same is executed, it will negate his Appeal.

Counsel for the Applicant filed written submissions which have been considered in this Ruling. As already observed, the Respondent did not make any submissions as

10 the Application was marked as an **ex parte** Motion.

Issues

**Whether there are justifiable reasons to grant the reliefs sought*.*

15 Resolution of the issue

Counsel for the Applicant while relying on Order 22 Rules 55, 56 and 57, the Court decisions in the cases of **Iftra (U) Ltd versus Ponsiano Rwakataka and Uganda Marine Products Ltd HCMA No. 107 of 2010, Mary Nakato versus Nanyonga Rose and Sekito Edward HCC No. 04112 of 2011** and others, submitted that at the 20 time the Order for attachment and sale was made by the Court, the Applicant was in possession of property comprised in Kyadondo Block 246 Plot 1635 land at Bukasa, Kyeitabye where he lives with his family having purchased the same from Johka Print Machinery Ltd before Judgement in Divorce Cause No. 0002 was delivered.

25 He argued that from the law and Court authorities relied upon, once an objection is raised, the Courts should be guided by who is in possession of the property as opposed to who is the legal owner. He prayed that this Court should release the property from attachment and sale pending the Appeal which was filed by the Notice of Appeal in High Court Family Division on 13th October 2023.

Court's consideration

- 5 In proceedings of this nature, in order for the Applicant to succeed, he had to satisfy the requirements of the law under which it was made. Order 22 rule 55 states that where any objection is made on the ground that such property is not liable to attachment, the Court will proceed to investigate the claim. The burden is on the Objector to adduce evidence to show that at the date of attachment, he had some
- 10 interest in the property.

Order 22 rule 55, 56, and 57 provide as follows:

"55 (1); Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that the property is not liable to the attachment, the court shall proceed to investigate the claim or objection with* 15 *the like power as regards the examination of the claimant or objector, and in all other respects, as if he or she was a party to the suit; except that no such investigation shall be made where the court considers that the claim or objection was designedly delayed.*

(2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the 20 *claim or objection."*

> "56; 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."*

"57; where upon the said investigations the court is satisfied that for the reason stated in the claim or objection, such property was not, when attached, in the possession of the* 25 *Judgment Debtor or of some person in trust for him, in the occupancy of a tenant or other person paying rent to him or that being in possession of the Judgment Debtor at such time, it was so in his possession not on his own account or as his property but on*

account of some other person, the court shall make an order releasing the property, wholly or to such an extent as it thinks fit from attachment"

The guiding principles in cases of this nature were considered in *Chotabhai M. Patel versus Chaprabhi, (1958) EA 743* which case was cited with approval in *David*

- 5 *Muhenda and 3 others versus Margaret Kamuje, Supreme Court Civil Appeal No. 9 of 1999* and were stated as follows:
- 1) Where an objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to attachment the Court shall proceed to investigate the objection with the like 10 power as regards examination of the Objector, and in all other respects as if he was party to the suit.
- 2) The Objector shall adduce evidence to show that at the date of attachment, he had some interest in the property attached.
- 3) The question to be decided is, whether on the date of attachment, the Judgment 15 Debtor or the Objector was in possession, or where the Court is satisfied that the property was in the possession of the Objector, it must be found whether he held it on his own account or in trust for the Judgment Debtor. The sole question to be investigated is, thus, one of possession of, and some interest in the property.

- 20 4) Questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on account of or in trust for the Judgment Debtor or some other person. To that extent the title may be part of the inquiry *[See Mary Nakato Versus Nanyonga Rose and Sekito Edward (supra)].*

- 5

Applying the above principles to the instant case, it is important to note that the Applicant's alleged interest in the suit property does not need any further inquiry. It arose during the hearing of Divorce Cause No. 0002 of 2018 and it was considered and exhaustively concluded. I will reproduce an extract from the Judgment of this

5 Court in Divorce Cause No.0002 of 2018 for purposes of clarity and it reads as follows:

"*In the case before me, as already observed, sufficient evidence was adduced to prove that Mr. John Kaddu purchased the suit property with Mrs. Teddy Kyeyune Kaddu, his wife then from the wife's sister Ms. Hellen Namirimu Kyeyune. He was given a sale agreement, Certificate of Title*

10 *and a signed transfer form which was blank and Mr. John Kaddu Bwabye four years later incorporated the company and had the suit property transferred in the names of the company with the sole intention of concealing its identity thereby disentitling his wife of her interest in the suit property.*

His under declaration of the consideration cannot also be ignored and it also points at his intent 15 *to defraud the government of taxes thereby rendering the transaction unlawful.*

It is also evident from Company Form No. 7 (PEX 4(c)) that at its incorporation, Mr. John Kaddu Bwabye was holding 98 % shareholding while his brother Isaac Ssebaduka had 2% shareholding. It is also worth noting that by the Board Resolution of 20th December 2017 which was admitted as PEX 4(f) and Return of Allotment of Shares of the same date (PEX 4 (g)), Mr. John Kaddu Bwabye

20 *transferred 93% shareholding to one William Kabuye at a cost of UGX 980,000. Mr. John Kaddu Bwabye only maintained 5 % shareholding.*

Counsel for the cross petitioner argued that this transfer was deceitful because it was done less than a month to the filing of the Divorce Petition and whereas the briefcase company holds the suit property which is worth over UGX 500,000,000, it was illogical that 93% shares could be

25 *transferred at only UGX 980,000. She argued that the transfer of majority shares to a third party barely a month to his filing of this Divorce Petition was aimed at concealing his identity and association to the company and mainly the suit property.*

During cross examination by the court, Mrs. Teddy Kyeyune Kaddu testified that the estimate value of the suit property is about UGX 600,000,000 because it has a residential house and a block of six (6) apartments which were still under construction by the time she was denied access into the home by Mr. John Kaddu Bwabye. Whereas there was no valuation report produced in court, I

- 5 *have no reason to doubt her estimation. If what she estimated to be the value of the suit property is indeed true, then it is indeed inconceivable that Mr. John Kaddu Bwabye would transfer 93% shareholding in the company in whose name the property worth that value is registered at only UGX 980,000. I agree with counsel for the cross petitioner that indeed that transfer was intended to mislead the court regarding the shareholding of the company but with the resultant effect of*
- 10 *disentitling the cross petitioner of her interest in the suit property.*

Counsel for the cross petitioner also submitted on the letter filed in this court by Anguria & Co. Advocates on 4th July 2019 who claimed to be the lawyers for Johka Print-Machinery Limited. She argued that the company was not a bonafide purchaser for value as claimed in the letter by Anguria & Co. Advocates.

- 15 *I have had the opportunity to read the said letter in which Anguria & Co. Advocates state that they were lawyers for Johka Print Machinery Limited, the registered proprietor of the suit property. It is indicated in that letter that the company is a bonafide purchaser having purchased the same from Mr. Kaddu John. In that letter, it was further stated that the company which is distinct from its shareholders and directors had already executed a land Sales Agreement of the suit property*
- 20 *with a one Erick Kiggundu only waiting for the final payment. The letter also indicated that there are many parties interested in the suit land and it would be properly handled in the Land Division of the High court or add the company and Kiggundu as parties on this Divorce Cause.*

The letter of Anguria & Co. Advocates is self-defeating. Whereas it is claimed in the letter that the company purchased the suit property from Mr. John Kaddu, the transfer documents which were

25 *admitted in the court indicate that transfer to the company was by Ms. Hellen Kyeyune and not John Kaddu (PEX3(b) and PEX 3(c). In fact, on the Transfer Form, (PEX3(b)), Mr. John Kaddu signed as the Managing Director of the transferee (the company). From the assembled evidence, it is not true that the company bought the suit property from Mr. John Kaddu and it is also not true that the company purchased the suit property from Ms. Hellen Kyeyune because she denied having*

ever sold her property to the company but to the couple whom she kept on referring to as "John and Teddy" during cross examination.

Furthermore, the said Erick Kiggundu who is said to have bought the suit property from the company cannot claim to be a bonafide purchaser because as already observed, the company did

5 *not have a good title to pass because of fraud, besides, there is a caveat on the Certificate of Title filed by Mrs. Teddy Kyeyune Kaddu. Did the said Erick Kiggundu conduct a search to ascertain whether the suit property is encumbrance free? It is my finding that the said Erick Kiggundu has no interest to claim on the suit property.*

In light of the above therefore, I find that Mr. John Kaddu Bwabye fraudulently transferred the
10 *suit property into the names of Johka Print-Machinery Limited. He is the one who had the Certificate of Title with a blank signed transfer and he signed on behalf of the company as the Managing Director. The company was incorporated solely for purposes of hiding behind the corporate veil so as to defraud the cross petitioner. I therefore, hereby lift the corporate veil and find that the acts attributed to the company were actually done by Mr. John Kaddu Bwabye who*

- 15 *held 98% shareholding in the company at the time the suit property was registered in the name of the company. Issue No.2 is equally answered in the affirmative. The petitioner/ Cross Respondent fraudulently transferred the suit property to Johka Print Machinery Ltd." (***See: Divorce Cause No. 0002 of 2018: John Kaddu Bwabye versus Teddy Kyeyune Kaddu.**)
- 20 As observed from the above extract, this Court already considered the alleged interest of the Applicant on the suit property and made a finding that he had no claim at all because the Court found that Johka Print Machinery Ltd from whom he claimed to have purchased the suit property had acquired it fraudulently. The Court made a finding that the property was matrimonial and belonged to John Kaddu Bwabye and
- 25 his then wife Teddy Kyeyune Kaddu in equal shares.

It should also be emphasized that John Kaddu Bwabye has never appealed the decision in Divorce Cause No.0002 of 2018. On the contrary, he has opted to file multiple Applications all aimed at denying the Respondent her entitlement in the

property. It should also be emphasized that the Order of the Court for attachment and sale of the suit property is for recovery of the taxed Bill of costs of UGX 46,415,450 vide EMA No. 0024 of 2023 arising from the Decree in the Divorce Cause. This Bill of costs was arrived at with the consent of Counsel for both parties

5 namely John Kaddu Bwabye and Teddy Kyeyune Kaddu.

I will further note that Mr. Kiggundu Erick is not just an innocent third party in this matter. Since I started handling this case with its multiple Applications, I have come to a conclusion that John Kaddu Bwabye, Johka Print Machinery and Erick 10 Kiggundu are one and the same or they are working together with the aim of defeating justice. This conclusion has been informed by the following:

- (a) During the hearing of Divorce Cause No.0002 of 2018, neither John Kaddu Bwabye nor a representative from Johka Print Machinery nor Erick Kiggundu ever appeared in the Court. Apart from a letter which was addressed to the 15 Court by Anguria & Co. Advocates as pointed out in the above extract, no other follow up was made. It is my considered opinion that by the said letter from Anguria Advocates, the Applicant, Erick Kiggundu was fully aware that there was a suit where the suit property was in contention. If indeed he was an innocent purchaser of the same, he should have been very vigilant and even 20 made a vehement Application to be joined as a party in the suit;
- (b)After the Judgment in the Divorce Cause was delivered on 23rd August 2022, John Kaddu Bwabye never bothered to file an Appeal against the decision. Instead, after a period of about six months, John Kaddu Bwabye, Johka Print 25 Machinery Ltd and Erick Kiggundu filed multiple Applications at the same time and by the same advocate who represented John Kaddu Bwabye in the Divorce Cause. These were the Applications; *Miscellaneous Application No.*

0086 of 2023: John Kaddu Bwabye versus Teddy Kyeyune Kaddu seeking for orders for setting aside the Judgment in Divorce Cause No.0002 of 2018, *Miscellaneous Application No. 0542 of 2023: Johka Print Machinery Ltd, Kiggundu Erick versus Teddy Kyeyune Kaddu and Commissioner Land* 5 *Registration* also seeking to set aside the Judgment in Divorce Cause No. 0002 of 2018 and to reinstate the Certificate of Title comprised in Kyadondo Block 246 Plot 1635 land at Kyeitabye to its former position, *Miscellaneous Application No. 0143 of 202: Johka Print Machinery Ltd, John Kaddu Bwabye and Kiggundu Erick versus Commissioner Land Registration and* 10 *Teddy Kyeyune Kaddu* seeking for declarations and orders that the several transactions done on the Certificate of Title of the suit were illegal. All these Applications were dismissed with costs;

- (c) During the hearing of these Applications, it should be noted that neither John 15 Kaddu Bwabye nor a representative from Johka Print Machinery nor Erick Kiggundu ever appeared in the Court. I am mindful that they had an advocate in Court. However, given the value of the property (approximately UGX 600,000,000) as indicated in the above extract, any person who is genuinely affected by the decision of the Court would personally attend the Court to 20 show his vigilance. It is inconceivable that someone who claims to own property of that value would afford not to attend Court in a matter where that property is at stake;

- (d) After the dismissal of the above Applications, many other Applications, 25 including this one were filed by John Kaddu Bwabye and Erick Kiggundu (separately) but all with one goal of stopping the attachment and sale of the suit property. Though this time the pleadings of Erick Kiggundu were filed by

M/S Solace Advocates, a different law firm from what originally represented him, it is my finding that it is still the same Advocate who has all along been representing John Kaddu Bwabye, Johka Print Machinery Ltd and Erick Kiggundu. My finding is informed by the fact that by the practice of the 5 Family Division Registry, an advocate who files pleadings, he/she is required to furnish a copy of his/ her Practicing Certificate and telephone contact which are attached on the file.

Though the pleadings are drawn and filed by M/S Solace Advocates, the Practicing Certificate on the file is of a one Ms. Namazzi Judith Tumusiime of Katende, Ssempebwa & Co. Advocates who 10 are the Advocates of John Kaddu Bwabye in these current Applications. Ms. Namazzi Judith Tumusiime is the same advocate who appeared in the Divorce Cause and in the multiple Applications that were dismissed. Though she did not physically appear in the Court in this Application and the others related which came up for hearing on the same day, and instead sent representatives, 15 all the files have her Practicing Certificate indicating that she is the one who presented the pleadings in Court Registry.

In light of the above, it is my finding that it is not clear whether the Applicant actually exists in real sense because he has never appeared in Court. I would have 20 expected some vigilance of an Applicant who is gravely affected by the decision of the Court. It is highly likely that he is a fictitious person. However, if at all he does exist, it is still the finding of this Court that he is not an innocent purchaser. He is working for and or with John Kaddu Bwabye, the Judgment Debtor.

25 It is also important to note that the Applicant has not adduced evidence to the satisfaction of the Court that he was in possession of the suit property at the time the

Order of attachment and sale was issued. Apart from stating in his Affidavit that he was in possession thereof with his family, he did not adduce any evidence to prove that. I would have expected at least one adult member of his household to depone an affidavit to that effect. I would also have expected the Applicant to adduce evidence 5 of any member of the Local Leadership of the area in support of his claim of

possession of the suit.

it had no good title.

In the absence of this, this Court is not satisfied that the Applicant was in possession of the suit property and if at all he is, he is on the property unlawfully. As long as

10 the decision in Divorce Cause No.0002 of 2018 has not been challenged in the higher Court, it still stands and as already observed, no Appeal has ever been filed to challenge it. If the Applicant still insists that he has a valid claim, he should file a suit against Johka Print Machinery Ltd who purported to sell him property for which

The Applicant also attacked the Respondent for withdrawing *Civil Suit No. 0885 of 2021: Kyeyune Teddy versus Johka Print Machinery Ltd, John Kaddu Bwabye, Kiggundu Erick and Commissioner for Land Registration* which was registered in the Land Division. He argued that he would have been given an opportunity to be heard. Regarding the matter in the Land Division, this Court came to learn about it during the hearing of Divorce Cause No. 0002 of 2018. The Cross Petitioner (Ms. Teddy Kyeyune Kaddu) informed the Court that the Divorce Cause which was filed in 2018 was taking long and her then husband Mr. John Kaddu was dealing with the suit property fraudulently. She also felt that her advocate in the Divorce Cause had not helped her and that is why she hired another lawyer who filed a case in Land Division. The same was filed on 29th September 2021. After filing the matter in the

Land Division, hearing in the Divorce Cause started progressing steadily and

because the reliefs sought were the same in both matters, she formally withdrew the case from the Land Division.

Having looked at the Complaint that had been filed in the Land Division, I find that the

Respondent had a valid reason to withdraw the matter in the Land Division because it sought similar reliefs with the Divorce Cause.

Consequently, therefore, it is my finding that this Application lacks merit and is accordingly dismissed with costs.

Dated at Kampala this 1st day of July 2024.

15

Alice Komuhangi Khaukha **JUDGE** 01/07/2024

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