

UGANDA / JUDGMENT

Kyezira v Best Bargaining Financial Services Limited & Another (Miscellaneous Application 1304 of 2022) [2024] UGCommC 269 (19 February 2024)

[2024] UGCommC 269

COURT

Commercial Court of Uganda

BEFORE

Anna B. Mugenyi, J

CASE / FILE NUMBER

Miscellaneous Application 1304 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 1304 OF 2022
(ARISING FROM MEDIATION CAUSE NO. 779 OF 2018) (ALL ARISING FROM HCCS
NO. 852 OF 2018)

KYEZIRA ABDEEL MUSIGIRE :::::::::::::::::::: APPLICANT

VERSUS

I. BEST BARGAINING FINANCIAL SERVICES LIMITED

2. MANDY MUGERWA PATRICIA :::::::::::::::::::: RESPONDENTS

BEFORE: HON. LADYJUSTICE ANNA B. MUGENYI

RULING

This Application was brought by way of Notice of Motion under Order 22 rules 55, 56 and 57 of the Civil Procedure Rules (CPR) and Section 98 of the Civil Procedure Act (CPA) for orders that:

- a) The property or land comprised in Busiro Block 424 Plot 1571, land at Mpala Wakiso District measuring approximately 0.0460 hectares be released from attachment and sale as it is subject to third party rights
- b) The respondent pays the costs of the application.

The Application was supported by the Affidavit in support and in rejoinder of Kyezira Abdeel Musigire as well as the Affidavit in reply by the 2nd respondent and was opposed by the Affidavit in reply of the 1st respondent's managing director, Birimbasa Erisa and the supplementary affidavit of Tumwesigye Innocent, the alleged original owner of the suit land.

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BACKGROUND

The 2nd respondent and the applicant were married and divorced but their children allegedly reside on the suit land in issue. Allegedly without the knowledge of the applicant the 2nd respondent mortgaged the suit land which was not registered in her names with the 1st respondent.

Meanwhile, the applicant and 2nd respondent had entered into a memorandum of understanding where they had contributed money for the joint purchase of the property with a view of transferring the suit land in the names of their adult children. When the 2nd respondent defaulted in payment of the loan she obtained from the 1st respondent, they executed a consent for the payment of the money with the 1st respondent.

Due to the 2nd respondent's default, the 1st respondent applied for the execution of the consent which resulted in the issuance of a warrant of attachment and sale of the suit land which the applicant got to know about through the media hence the present application.

Counsel for the parties made oral submissions which have been considered in this Ruling.

REPRESENTATION

The Applicant were represented by M/s Magna Advocates while the Respondents was represented by M/s Nafi & Wanume Advocates.

RULING

The purpose of Objector Proceedings is to prevent property from being attached if that property is at the date of attachment not in the judgment debtor's possession or if the judgment debtor is holding it in trust for another. An application for objector

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proceedings therefore acts as a bar to a warrant of attachment. (Senteza Erieza & Anor vs Twesigye Eliyasi & Anor HCMA No.57 of 2020)

The provisions that provide for Objector Proceedings are Order 22 rules 55, 56 and 57 of the CPR which are reproduced below:

Order 22 Rule 55 of the CPR provides that:

"If/here 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 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".

Order 22 Rule 56 CPR 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".

This order therefore places the duty on the objectors to adduce evidence that on the date of the attachment, they had some interest in the property in issue.

Further Order 22 Rule 57 CPR provides that:

"Where upon the investigation under rule 55 the court is satisfied that for the reason stated in the claim or objection, the property was not, when attached, in the possession of the judgment debtor or of 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 that 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".

The guiding principles in cases of this nature were considered in the case of Chotabhai M. Patel v Chaprabhi 119581 EA 743 which was cited with approval

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in David Muhenda and 3 others v Margaret Kamuje SCCA No. 9 of 1999 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 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 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.
- 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.

In objector proceedings, the question to be investigated is therefore one of interest and possession.

In the present Application, the Applicant contends that the 1st and 2nd respondents entered into their own loan transaction and the 2nd respondent who had mortgaged the suit property comprised in Busiro Block 424 Plot 1571 land at Mpala Wakiso district defaulted and at the time of mortgaging this property the suit land was registered in the names of Tumwesigye Innocent. When the 2nd respondent defaulted to pay the mortgage, the 1st respondent instituted Civil Suit No. 852 of 2018, wherein Mediation Cause No. 779 of 2018 was heard and the parties executed consent where the 2nd respondent undertook to pay the money due to the 1st respondent. The 2nd respondent did not fulfill the obligations under the said consent, and her actions

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culminated into execution hence the issuance of warrant of attachment and sale of the suit land on the 6th September 2022. The 1st respondent advertised the suit land in the newspapers and it is through that notice of public auction that the applicant got to know that the suit land is subject to execution hence the present application.

Counsel for the applicant raised two issues to be resolved by this court namely:

- 1. Whether the process leading to the issuance of warrant and attachment was illegal.
- 2. Whether this suit property should be released from the execution.

Counsel for the applicant informed court that since one of the prayers in the Application had been resolved in the previous application for stay execution, they maintained the two prayers for release of the property in issue from attachment because it is subject to third party rights and also for costs of this application.

Counsel for the applicant submitted that regarding the issue of whether the process leading to the sale and attachment of the suit land was legal, Order 22 Rule 5I of the CPR provides that at the time of ordering for the attachment and the sale of the suit land the certificate of title should be deposited in court, and that the said Order is in agreement with Section 48 of the Civil Procedure Act which provides that at the time of ordering for attachment and sale the duplicate certificate of title should be deposited in court. Counsel submitted that this was not done and this led to the tampering with the certificate of title. Further that at the time of issuing the warrant of

attachment in September 2022, the land was registered in the names of Tumwesigye Innocent and after the said issuance the respondents registered the said certificate of title in the names of the 2nd respondent on the 9th of September 2022. Counsel stated that evidence in the affidavit in rejoinder, the search certificate as well as annexure M of the 1st respondent's affidavit in reply, a certificate of title

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showed that the 2nd respondent was registered on this title on the 9th of September 2022 at 1:40am.

Counsel submitted that the objective of the Rule that states that the certificate of title should be deposited in court is to prevent further transfers and creating more charges on the suit land; and that in this case the certificate of title was in the hands of the 1st respondent, as the judgment creditor, and instead of depositing this title in court they took that opportunity to tamper with the title and register the 2nd respondent as the registered proprietor.

Counsel for the applicant further submitted that before the Registrar could issue the warrant she would have ordered for search statement because this property should have been in the names of the judgment debtor at the time of issuing this warrant but it was not the case. That the Registrar erroneously issued the warrant without even looking at the certificate of title which led to further illegalities which were committed by the 1st respondent.

Counsel relied on the case of *Ndawula Ronald v Sudafine Limited* Miscellaneous Application No. 170I of 2014 wherein Justice Owinyo Dollo (as he was then) held that in light of the unmistakable clear and mandatory provision of the rules as set above for attachment of immovable property in execution, the advertisement of the suit property for sale after attachment without regard to elaborate procedure set out in rule such as first securing the certificate of title thereto and publishing the attachment was wrong; and submitted that to-date the certificate of title in issue has never been delivered to court and that it is a rule of equity that he who comes to equity must come with clean hands. Counsel contended that the 1st respondent is not clean and prayed that court rules that the process leading to the attachment and sale of the suit land was tainted with illegalities and be pleased to set it aside.

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Counsel cited the case of *Makulu International v His Eminence Cardinal Nsubuga* and submitted that it is a principle of law that once an illegality is brought to the attention of the court it can never be sanctioned; and that the 1st respondent contravened Order 22 Rule 5I of the CPR and, Section 8 of the Civil Procedure Act and therefore this court should set aside the warrant of attachment and sale of the suit land.

Regarding the second issue of whether the property should be released from attachment, counsel for the applicant submitted that the suit land had third party rights created as a result of memorandum of understanding executed between the applicant and the 2nd respondent (annexure C to the application) and that the memorandum dated 11th day of October 2016 in

clause 4 states the parties will contribute to the construction of the house and in clause 5, that the parties and their two children will all jointly own the land and the house. Further that in the supplementary affidavit in rejoinder, sworn by one of the children of the applicant and also as seen in the affidavit of the 2nd respondent, he confirms the fact that they stay on the suit land and the applicant has been maintaining the houses on the said land and that the benefits coming from the same land, have been benefiting both of them and their basic needs. Counsel argued further that even the 2nd respondent in paragraph 4 of her affidavit in reply confirms the fact that this land was owned jointly between the applicant and the 2nd respondent and even attached the same memorandum that the applicant attached in their application.

Counsel submitted that another element required to succeed in applications of this nature under Order 22 Rule 55 and 56 is evidence to prove that the property must be subject to third party rights and must be in possession of the objector at the time of warrant. He submitted that in respect of the possession, the applicant was in constructive possession of the suit land because the suit land has the children of the

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applicant whom the applicant takes care of and there is a supplementary affidavit in rejoinder by one of the applicant's children confirming what is stated in the application. Counsel relied on the case the case of Pakira Harriet and another v lyatoto Child Ministries where it was held that a property which is subject to third party rights and where the applicant or objector shows an interest or that he held an interest at the time of warrant should never be a subject of attachment.

Counsel submitted that in this case, the property in issue is immovable property and the applicant has established that he has equitable interest in the said land; that the 1st respondent had knowledge of the third party rights because ever since the land was mortgaged to the 1st respondent they only started transferring after the warrant of attachment was issued in September 2022; that the 1st respondent was put on notice of the said interest because the 2nd respondent had even mortgaged her car whose logbook was in her names as seen in annexure M attached to the 1st respondent's affidavit in reply and if the 1st respondent saw that the log book was in the names of the 2nd respondent they should have required the 2nd respondent to transfer the said land into her names as well.

Counsel concluded by submitting that the 1st respondent was aware of the third party right of the applicant and that is why the land stayed unregistered into the names of 2nd respondent; and that there was imputed notice which should have put the 1st respondent on notice that the suit land had third party rights and that in the circumstances the court ought to release the suit land from attachment in accordance with Order 22 Rule 5-i up to 57. Further that since the certificate of title is in possession of the 1st respondent this court should order for the cancellation of the 2nd respondent's name on the certificate of title because it was registered after court had issued an order and also order for the production of the said certificate of title for the benefit of the applicant.

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Counsel for the 1st respondent submitted that in respect to issue one, the fact that in Order 22 Rule 51 CPR relied on by counsel for the applicant the judgment debtor is required to exhibit a certificate of title for such an immovable property, the main essence of this rule was to prohibit the judgment debtor from making any further transfers in respect to the property in issue; and that in the instant case, the certificate of title was in the hands of the judgment creditors but not in the hands of the judgment debtors. That the rule is specific in respect to the judgment debtor and does not order the judgment creditor to do the same and that it was proper that the judgment creditor who is the 1st respondent was rightfully with the title and cannot be held liable under Order 22 Rule 51.

Counsel for the 1st respondent further submitted, in respect to the second issue which is release of the property from attachment, that the property for attachment as described by counsel for the applicant is land comprised in Busiro Block 424 Plot 157 land at Mpala Wakiso district measuring 46 decimals which was brought to the 1st respondent as a security for a loan secured or purchased solely by the 2nd respondent. That the 2nd respondent purchased the property and fully took possession of the same; constructed thereon a guest house and does not deny the fact in her affidavit reply that she purchased this property solely alone.

Counsel submitted that the applicant has not shown any evidence to show that he has any interest in the suit property; that he relies on a suspect agreement executed between himself and the 2nd respondent to rely a claim of interest on the suit property and that the property in issue according to the agreement was purchased by the 2nd respondent on the 14th day of October 2017 and does not in any way mention that the applicant has any interest in the land. Counsel stated that this same piece of land was mortgaged to the 1st respondent or presented as security for a loan of 147, 200,000/= shillings on the 26th day of October 2017 until the time when the 1st

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respondent chose to sell off the same as a result of the consent that had been made; and that the applicant never at any time came up to show that he has an interest in the suit land despite him having known that this property had been purchased and that all documents were in custody of the 2nd respondent and further that he should have lodged at a caveat on the same piece of land as a way of claim interest in the same

Counsel submitted that the applicant, apart from manifesting his claim through a suspect agreement, did not in any way produce any evidence to show that he contributed any money to the purchase of this suit property and should at least have attached an acknowledgement of receipt of money by the second respondent or a bank transfer to prove the fact that he contributed money to the purchase of the property as he maintained in his suspect memorandum of understanding that he produced in court. That even after the purchase of this property the applicant ought to have at least lodged the caveat as earlier submitted so as to notify the third parties that he has an interest but he never did the same. Counsel argued that it is trite law that this court in order to make a release from attachment has to be satisfied as to the fact

that the property was not, when attached, held by the judgment debtor for himself or herself or by some other person in trust for the judgment debtor.

Further that the applicant should satisfy this court that the applicant as the objector holds the property on his or their own account though at the time of attachment of this property, the same was in possession of the 2nd respondent who operated therein a guest house in which she personally collected money. Counsel argued that at the time of obtaining a loan facility, the 2nd respondent presented a certificate of title in the names Tumwesigye Innocent, an agreement of purchase where she obtained the title from the said Tumwesigye with all the transfer forms. The said Tumwesigye Innocent by way of supplementary affidavit made it clear to the court that the 2nd

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respondent solely negotiated the sale of the property and he has never met at any time the applicant. Further that although the applicant avers that he has been in constructive possession of the suit land, he does not demonstrate in his affidavit how he has been so and to and to which magnitude.

Counsel for the 1st respondent submitted that the 2nd respondent forcefully avers in her affidavit in reply that the suit property is jointly owned by herself and the applicant but this is a total lie as no evidence has been adduced by the 2nd respondent to show that the suit property is jointly owned by the two parties because the same should have been disclosed at the time of obtaining the loan. That this was never disclosed and there was no evidence whatsoever that the applicant had any interest at the time of getting a loan from the 1st respondent. The joint ownership of the property can only be evidenced by showing that both are registered on the certificate of title or that they both acquired this title jointly by presenting evidence to that effect. Counsel contended that an agreement by the parties produced in court without any collaborating evidence of joint ownership or acquisition of the same cannot be used to defer a joint ownership of a property.

Counsel concluded by submitting that the suit property was solely owned by the 2nd respondent; it was in possession of the 2nd respondent by the time of attachment and at all times the 2nd respondent, was benefiting from the same; and that the applicant's application should be dismissed with costs and the prayers there in denied so that the 1st respondent proceeds with the execution of the decree.

The 2nd respondent's counsel submitted that it is not true that the land was solely owned by the 2nd respondent as alleged by the counsel for the 1st respondent and that the land was jointly owned by the applicant and the 2nd respondent as indicated in the paragraph 10 of the 2nd respondent's affidavit in reply. That the 1st respondent

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fraudulently transferred the suit land into the 2nd respondent's names by forging her signature on the transfer forms as stated under paragraphs 8 and 9 of the 2nd respondent's affidavit in reply and as such a court cannot sanction an illegality that has been brought to its attention as stated in *Makula International v Cardinal Il/amalo Nsubuga*.

Counsel for the 2nd respondent further submitted that the process of issuing the warrant of attachment by the Registrar was tainted with illegalities and the first illegality was the 1st respondent's act of registering the property into the judgment debtor's name who is the 2nd respondent after issuing the warrant of attachment as evidenced by the search statement which is attached to the applicant's affidavit in rejoinder. Counsel relied on the case of *Uganda Broadcasting Corporation v Simba K Limited* where the Court of Appeal stated that the land must be in the judgment debtor's name before transfer at the time of execution to submit that the property not being in the names of the 2nd respondent at the time of sale should have been a notice of 3^d party rights and that should have also informed the 1st respondent not to proceed with execution. Further that the duplicate certificate of title was never deposited in court before attachment and this contravenes Section 48 of the Civil Procedure Act and Order 22 Rule 51 of the Civil Procedure Rules.

Counsel for the 2nd respondent submitted that the 2nd respondent maintains her earlier request to court that she is willing to pay though she was not given an opportunity to do so by the 1st respondent and prayed that the court allows the 2nd respondent time to come up with a payment period within which to complete payment of the outstanding sums of money.

In rejoinder, counsel for the applicant submitted that although the 1st respondent states that Order 22 Rule 51 acquits the obligation of depositing the certificate of

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title on the judgment debtor, in the circumstances of this case, the title was in the hands of the judgment creditor/ the 1st respondent and so Order 22 Rule 51 applies *mutatis mutandis* to the 1st respondent because now the obligation was on it to deposit that title in court. Further that although counsel for the 1st respondent states that the memorandum of understanding which is annexure C is suspect, the 2nd respondent in the affidavit in reply she attaches the same document and does not deny the same. Further still that although Tumwesigye Innocent confirms that even during the purchase transaction he dealt with the 2nd respondent only, the circumstances for signing the memorandum of understanding brought to the attention of court indicate that the applicant divorced with the 2nd respondent as seen in annexure B, a divorce decree, and there was no way the applicant would have appeared with the 2nd respondent on the certificate of title yet they were divorced.

Counsel for the applicant responded further that on the issue of interest, counsel for the 1st respondent did not appreciate the equitable interest in the circumstance and relied on the case of *Luis Okello v Gonga Ronald* Civil Appeal No. 119 of 2019 to submit that an equitable interest is as much as legal interest in the property attached and the objector must show his or her interest in the attached property on the date of attachment in order to succeed.

Counsel also contended that although the 1st respondent is disputing ownership or title issued in respect of this matter Order 22 Rule 60 of the Civil Procedure Rules allows the person to institute another suit in order to determine the ownership rights in respect of the suit land; and that if the court releases the property from attachment the 1st respondent will suffer no prejudice because he still has the protection of Order 22 Rule 60 to institute to determine the ownership rights while on the side of the applicant, the law does not give him that opportunity which creates a prejudice in the circumstances.

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Counsel submitted that while the 1st respondent states that the applicant does not demonstrate how his constructive possession of the suit property arises, paragraph 8 of the affidavit in support of the application demonstrates that the suit land is in possession of the children and the child who deposed a supplementary affidavit in rejoinder, confirmed that the applicant takes care of the buildings on the suit land and he also sometimes comes to the suit land to check on them, and repair or make other developments on the said land.

Further that in the 2nd respondent's affidavit in reply, she talks about the forgery of her signature and attaches the transfer forms she handed over to the 1st respondent but a close look at the transfer forms show they do not have the signature of the 2nd respondent so it confirms the assumption that the 1st respondent forged or tampered with the certificate of title because the 2nd respondent was not registered on the title and it is the 1st respondent who registered her; and that it is the 1st respondent who gave ownership of this suit land to the 2nd respondent contrary to the stated law in respect of ownership.

Counsel prayed for the deposit of the certificate of title in issue with the applicant and cancellation of the 2nd respondent's name on the same because it was done after court's orders which is contrary to the law and prayed for costs as they have been in court since 2022 with the 1st and 2nd respondents who have been playing games since then.

In response to the 2nd respondent's submissions, the 1st respondent submitted that the 2nd respondent avers to the fact that the property is jointly owned by herself and the applicant, however, no evidence is furnished by the 2nd respondent to that fact; that this only leads to the conclusion that both are conniving so as to make a release of this property from attachment. That the 2nd respondent submits to the fact that the 1st

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respondent forged her signature to the title but the transfer forms were submitted by the 2nd respondent to the 1st respondent and the title itself with the intention that they transfer the same in the names of the 2nd respondent which the 1st respondent did. That although the 2nd respondent's counsel maintains that the process was tainted with illegalities because the 1st respondent did not submit the certificate of title, the law does not make it mandatory for the judgment creditor to do so.

Counsel for the 1st respondent also submitted that although counsel for the 2nd respondent submitted that the 2nd respondent was not provided with a chance to pay by the 1st respondent, this is a total lie because the 2nd respondent has been given ^a lot of time to make the payments but she has failed herself. Counsel for the 1st respondent prayed that the application be dismissed and Court finds that both the applicant and then 2nd respondent were in connivance.

With regard to the first issue raised by the applicant as to whether the process leading to the issuance of warrant and attachment was illegal, it is the considered opinion of this Court that Order 22 rule 51 of the Civil Procedure Rules and section 48 of the Civil Procedure Act are very clear and instructive and for the avoidance of doubt are replicated respectively hereunder:

Order 22 Rule 51 of the Civil Procedure Rules provides:

" 51. Attachment of immovable property

Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from the transfer or charge and ordering the judgment debtor to deliver up to the Court the duplicate certificate of title to the property.

(2) A copy of the order shall be served by affixing it on a conspicuous part of the

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property or be served on the judgment debtor and further advertised as the Court may direct; except that the Court may further direct that, if an order cannot be served as aforesaid, it shall be served by affixing a copy of it on some conspicuous place in the Court and also on some conspicuous part of the house, if any, in which the judgment debtor is known to have last resided or carried on business or personally worked for gain or in such other manner as the court thinks fit. "

Section 48 of the Civil Procedure Act states:

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48. Duplicate certificate of title to immovable property to be lodged with court before sale

(1)The court may order, but shall not proceed further with, the sale of any immovable property under a decree of execution until there has been lodged with the court the duplicate certificate of title to the property or the special certificate of title mentioned in subsection (j).

(2)The court ordering such sale shall have power to order the judgment debtor to deliver up the duplicate certificate of title to the property to be sold or to appear and show cause why the certificate of title should not be delivered up.

(3)If the court is satisfied that a judgment debtor has wilfully refused or neglected to deliver up such certificate when ordered to do so, the court may commit him or her to prison for a period not exceeding thirty days.

(4)If the court is satisfied that such duplicate certificate of title has been lost or destroyed or that the judgment debtor cannot be served with an order under this section or is wilfully withholding such certificate, the court shall call upon

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the registrar of titles to issue a special certificate as prescribed by the Registration of Titles Act. "

For attachment of immovable property to be effective first, there must be an order of attachment and secondly in execution of that order formalities prescribed therein have to be complied with, that is there must be a prohibitory order restraining the person from in any way alienating the property sought to be attached. Thus for an order of attachment to become effective the above conditions must be complied with.

Counsel for the applicant and 2nd respondent brought to the attention of Court the fact that the duplicate certificate of title was never deposited in court before attachment and this contravenes Section 48 of the Civil Procedure Act and Order 22 Rule 51 of the Civil Procedure Rules; and further that the process of issuing the warrant of attachment by the Registrar of the Court was tainted with illegalities because the 1st respondent registered the property into the judgment debtor's / 2nd respondent's name after issuance of the warrant of attachment as evidenced by the search statement which is attached to the applicant's affidavit in rejoinder. The 1st respondent did not adduce any evidence to dispute these facts and they are therefore not contested.

In the case of *Uganda Broadcasting Corporation v Sinba (K) Ltd & 2 Ors*, Civil Application 12 of 2014,, the honorable Justice Kenneth Kakuru (RIP) of the Court of Appeal stated thus:

"...I also find that the execution and sale of the suit property was irregular and illegal for other reasons.

A glance at the certificate of title of the suit property which is annexure 'F' in the affidavit of the respondent indicates clearly that by the time the warrant of attachment was issued on 29th November 2013, for the attachment and sale of the

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property, that property did not belong to the "Judgment debtor" ... Clearly therefore, the warrant of attachment was issued and executed against a property that did not belong to the "Judgment debtor". There was therefore no valid sale and no valid warrant on that account alone.

All the respondents were at all material times aware of the abovefact. The Registrar of this Court was also aware of this fact of at least ought to have been aware as the valuation report was available to him before the warrant was executed. He had a duty to ascertain that the property set out in the schedule to the warrant of attachment belonged to the "Judgment debtor" and nobody else.

I find that the 3rd respondent was acting unlawfully and fraudulently when he executed a warrant of attachment in respect of a property which he very well knew "*was not registered in the name of the "Judgment debtor". The 3rd respondent was not executing a lawful warrant, and as such he was not lawfully executing his duties, when he purportedly sold the suit property..."

From the above authority, I agree with the submissions of counsel for the 2nd respondent that since the certificate of title in issue was not in the names of the judgment debtor at the time the warrant of attachment was issued by the Registrar but in the names of Tumwesigye Innocent the original proprietor thereof, the said process was tainted with illegalities. Not only should the title in issue have been delivered to the Court as provided by law which would have enabled the Registrar to peruse of the same and discover that it was not in the names of the judgment debtor and hence question the anomaly and decline to issue the order of attachment; but also the said registration of the 2nd respondent on the title after issuance of the warrant of attachment was unlawful. More so if the 1st respondent is found to have

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forged the 2nd respondent's signature on the transfer forms as alleged by counsel for the 2nd respondent.

Further, the consequence of failure to comply with the position of the law as laid down in section 48 of the Civil Procedure Act and Order 22 Rule 51 of the Civil Procedure Rules was emphasized by Honorable Justice Alfonse Owiny Dollo, as he then was, in the case of Ndaula Ronald v Ugafin Limited M. A. No. 1710 of 2014 when he stated thus:

"...In the light of the very unmistakably clear and mandatory provision of the rules set out above for attachment of immovable property in execution, the advertisement of the suit property for sale after attachment, with disregard to the elaborate procedure set out in the rule, such as first securing the certificate of title thereto, and publishing the attachment, 'n)as 'wrong. The Registrar Execution must meticulously adhere to this requirement whenever the property sought to be attached, in execution, is land."

In light of the above, this Court is of the firm opinion that the issuance of the warrant of attachment by the Registrar in the manner he/ she did in the present case was wrong and irregular.

The arguments by the 1st respondent's counsel that Order 22 Rule 51 of the CPR do not apply to it are misleading because the consent order/judgment upon which the attachment has ensued was between the 1st respondent as the judgment creditor and the 2nd respondent as the judgment debtor and the certificate of title in issue was offered as security for the loan provided to the 2nd respondent by the 1st respondent.

From all the foregoing and keeping in mind the well-known principle of law that an illegality once brought to the attention of Court cannot be sanctioned, I find that the order by which the suit property was attached in execution of the consent entered

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into in Mediation Cause No 779 of 2018 was irregular and illegal and on that alone, the said order is hereby set aside and the suit property released from attachment.

I do not find it necessary to delve into the second issue at this point. If the 1st respondents are still interested in establishing the right which they claim property in dispute, they may proceed to institute a suit in that regard in with the law.

This application is accordingly granted and the costs are awarded to the applicant.

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HON. LADY JUSTICE ANNA B. MUGENYI

DATED

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Prepared on 13 October 2026 · Esheria