

UGANDA / JUDGMENT

Muscle Construction Limited v Bavima
Steels Limited & Another (Miscellaneous
Application 1256 of 2024) [2024]
UGCommC 260 (27 August 2024)
[2024] UGCommC 260

COURT

Commercial Court of Uganda

BEFORE

Mutesi, J

CASE / FILE NUMBER

Miscellaneous Application 1256 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 1256 OF 2024 (ARISING FROM EMA NO. 0233
OF 2023) (ALL ARISING FROM CIVIL SUIT NO. 0233 OF 2021)

MUSCLE CONSTRUCTION LTD ::::::::::::::::::::::::::::::

AND

<table>

BAVIMA STEELS LTD

::::::::::::::::::::::::::::

VERSUS

MUSCLE GROUP LTD ::::::::::::::::::::::::::::::

(Before: Hon. Justice Patricia Mutesi)

RULING

Background

The above named Objector brought this application by notice of motion under Article 28(1) and 44(c) of the Constitution of the Republic of Uganda, 1995, Section 98 of the Civil Procedure Act and Order 22 Rules 55, 56, 57, 60 and 65 and Order 52 Rules 1 and 3 of the Civil Procedure Rules seeking:

- 1. An order directing Mr. Kyagulanyi Kassim t/a New Buffalo Associates to release all the Objector's properties (in annexure F to affidavit in support of the application) which he attached and carried away pursuant to the warrant of attachment of 27th May 2024 in Civil Suit No. 0233 of 2021.
- 2. An order releasing the property in (1) above from attachment.
- 3. An order stopping the sale of the property attached under to the warrant issued to Kyagulanyi Kassim on 24th May 2024.
- 4. An order providing for the costs of this application.

Briefly, the grounds of this application are that:

- 1. On 27th June 2024, bailiffs under the name of Mr. Kyagalanyi Kassim came with about 10 motor vehicles and carried away the Objector's property, including cement, flat bars, mild steel plates, hollow sections, BRCs, Wire Products and iron bars, from the Objector's business premises in Lubowa.
- 2. The Objector has never been party to the suit from which the warrant of attachment arose and does not have any of the property attached.
- 3. It is just and equitable that this application is granted.

The application is supported by the affidavit of Ms. Mbekeka Medrine, a director in the Objector. She swore that, on 27th June 2024, a bailiff called Kyagulanyi Kassim went to the Objector's business premises with about 10 motor vehicles (which included UAJ 705N, UBJ 170C, UAR 923C, UAY 937M, UAZ 628J, UBK 317S and UAU 396T) and carried away the properties of the Objector. The properties included bags of cement, flat bars, mild steel plates, hollow sections, BRCs, Wire Products, iron bars and others all worth over UGX 429,180,501. The bailiff took the property on the basis of a warrant issued by this Court on 24th May 2024.

Ms. Mbekeka averred that all the said property belongs to the Objector and that the same was in the Objector's business premises at Sseguku-Lubowa, not on the Judgment Debtor's behalf/trust or on the account of any other person. That at the time it was impounded, the property was in the Objector's custody for sale.

She further stated that, on 28th June 2024, the Objector instructed M/S Factum Associated Advocates to investigate whether any judgment had been delivered against the Objector and the circumstances under which the same would have been delivered. On the said lawyers' preliminary investigations in this Court, it was established that the Judgment Creditor had obtained judgment against the Judgment Debtor in Civil Suit No. 0233 of 2021 (hereinafter "the main suit"). It was the warrant from the main suit that Mr. Kyagulanyi had executed when he took the Objector's property. However, the Objector was never a party to the main suit and is not aware of any other court decisions permitting attachment of its property to answer for the Judgment Debtor's debts.

The application is also supported by the affidavit of Mr. Muhanuzi Frank who said that he is a business friend to Ms. Mbekeka Medrine. He told the Court that, on 27th June 2024 at around 10:30am, he was called by Ms. Mbekeka Medrine who told him that some people had gone to the Objector's business premises in

Sseguku, Lubowa with Police and that they were loading the Applicant's stock on the vehicles they had come with. He rushed to the said premises and found a fleet of about 10 trucks guarded by Police. There were also other people at the premises who were loading the Objector's stock onto the trucks.

Mr. Muhanuzi further told the Court that Ms. Mbekeka requested him to take photos of whatever was happening at the time. He proceeded to take the photos using his phone. The photos show the trucks onto which the merchandise was being loaded. They also show the merchandise that was taken. The photos were later printed and they were brought to this Court as annexures to his affidavit.

Ms. Mbekeka later filed a supplementary affidavit in support of the application in which she clarified that the Objector's business premises are actually located in Lubowa and not in "Sseguku- Lubowa".

The Judgment Creditor opposed this application through the affidavit in reply sworn by its Sales Manager, Mr. Sharma Kaushal. He stated that the bailiff, Mr. Kyagulanyi Kassim, did not take away any goods in regard to the alleged warrant of 24th May 2024 and that this Court has never issued any such warrant in regard to the main suit. He averred that, at all material times, the goods were not in the control and possession of the Objector.

Mr. Kaushal told the Court that the Judgment Creditor has always supplied its various steel products to the Judgment Debtor and served demand notices for payment at the Judgment Debtor's known place of business at Lubowa where the execution took place. The Judgment Debtor and one of its directors, Charles Sendagire, have equitable, proprietary, possessory and legal interest in the land comprised in Block 265 Plot 9751 at Lubowa where the said business premises are located. To the Judgment Creditor's knowledge, the Judgment Debtor is the proprietor of that land and the Applicant was only incorporated on 6th July 2023 with its registered office address at Ntinda, Nakawa Division, Kampala, yet the execution complained of took place at Lubowa and not at Ntinda.

Mr. Kaushal stated that the Judgment Debtor has, at all material times, been in control of the goods supplied to it over the years by the Judgment Creditor by receiving and reselling them. The introduction of the Objector, the Judgment Debtor and one "Muscle Hardware Store" all allegedly located at the Lubowa premises is only a fraudulent attempt to frustrate the Judgment Creditor from

enjoying the fruits of litigation. The goods that were attached were all properly identified during the clearance process that was carried out by the Judgment Creditor and the Police at the Judgment Debtor's Lubowa premises.

The Judgment Debtor supported the application through the affidavit in reply of its director, Mr. Agaba David. He confirmed that the Objector and the Judgment Debtor are two legally-distinct entities with different directors. He stated that the Judgment Debtor has since ceased operating in the Lubowa premises and does not have any properties in the Lubowa area. He stated that the Judgment Debtor has no proprietary interest in any of the attached properties.

Finally, the Ms. Mbekeka Medrine filed an affidavit in rejoinder to the Judgment Creditor's affidavit in reply on behalf of the Objector. Therein, she clarified that the impugned warrant was actually dated 27th May 2024 and not 24th May 2024. She stated that the warrant was illegally executed when the bailiff impounded more goods than what was authorised by that warrant. For instance, the bailiff has since advertised to sell 1,764 TMT PCs yet the same were not authorised by the warrant. The advert also only mentioned 533 bags of cement yet the bailiff took more cement. She further told the Court that she does not know the said premises of the Judgment Debtor in Lubowa.

Issue arising

Whether the attached properties should be released from attachment.

Representation and hearing

At the hearing, the Objector was represented by Mr. Bwesigye Enoch of M/s Factum Associated Advocates, the Judgment Creditor was represented by Ms. Sharon Tem of M/s Tem Advocates & Solicitors and the Judgment Debtor was represented by Alma Associated Advocates. All counsel argued the application orally. I have fully considered the submissions of counsel, the laws and authorities they cited and all the other materials on the record in deciding this application.

Determination of the issue

Whether the attached properties should be released from attachment.

Section 44(1) of the Civil Procedure Act sets out the types of property which are liable to attachment in the execution of a decree or order of court. It provides that all saleable moveable or immoveable property 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 is liable to attachment. (Also see *GHC Recycle Ltd v Hakan Turkmen & Anor*, HCMA No. 0645 of 2024). It

follows that, if the judgment debtor is a retailer of hardware materials and owns a hardware shop, all its stock in that hardware shop is liable to attachment in execution for the recovery of the judgment debt.

However, Order 22 rules 55, 56, 57 and 58 of the Civil Procedure Rules anticipate situations in which property that is not legally liable to attachment is about to be attached or has been attached in execution of a decree or an order. Order 22 **rule 55** of the CPR enjoins courts to fully investigate all claims that property that is intended to be attached or that has been attached is not liable to attachment. Order 22 rule 57 of the CPR then provides that, where upon such investigation the court is satisfied that the property was, at the time of the attachment, in the possession of the objector on his or her own account or in the possession of the judgment debtor on the account of some other person, the court shall make an order releasing that property, wholly or to such extent as it thinks fit, from the attachment. (Also see *David Muhenda & 3 Ors v Margaret Kamuje*, SCCA No. 9 of 1999).

Thus, the goal of objector proceedings is to stop or prevent property from being attached and sold in execution if that property is, at the date of attachment, in the possession of a 3rd party on his or her own account or in the possession of the judgment debtor on account of some other person. See *Senteza Erieza & Anor v Twesigye Eliyasi & Anor*, HCMA No. 57 of 2020. To this end, objector proceedings reinforce Section 44(1) of the Civil Procedure Act to the extent that it provides that it is only that property which belongs to the judgment debtor that is liable to attachment in execution of the decree against debtor. (See *GHC Recycle Ltd v Hakan Turkmen & Anor* (*supra*)).

The only question to be decided in objector proceedings is whether, on the date of the attachment, the judgment debtor or the objector was in possession of the property sought to be released from attachment. Possession may be actual or constructive. For purposes of objector proceedings, a person who knowingly has direct physical control of a property at a given time has actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise control over a thing, either directly or through another person, is in constructive possession of it. (See *Lucy Oker Lagol & 2 Ors v Bonga Ronald Okech & Anor*, HCCA No. 119 of 2019).

Furthermore, it should be clarified that one who has constructive possession of property stands in the same legal position as one with actual possession of it. Court is always interested in knowing whether the objector exercised dominion over the property. This is determined by examining available records disclosing the name of the person on whose behalf the property is kept. That information may be gathered from documents used in the ordinary course of transactions of the nature being investigated by the Court. (See *Lucy Oker Lagol & 2 Ors v Bonga Ronald Okech & Anor* (*supra*)).

In the instant case, it has been contended by the Objector that all the attached goods belonged to it and not to the Judgment Debtor. The Judgment Debtor has confirmed that that is the position. In reply, the Judgment Creditor has assured the Court that the Lubowa hardware shop from which the attached goods were impounded is owned by the Judgment Debtor and that all the attached goods were first analysed and scrutinised to confirm that they belonged to the Judgment Debtor before they were impounded and taken away.

In proof of its claim, the Objector adduced, among others, 14 tax invoices which show that, in the 27 days between 1st June 2024 and 27th June 2024, the Objector bought several construction materials from various suppliers. These materials included cement, wire mesh, TMX and TMT bars, binding wire, wire nails and weld mesh. The Objector also adduced a list of 74 different items alleged to have been taken in varying capacities during the execution. (Annexure F to the supporting affidavit).

I have noted that although the said list had 74 items, the Objector did not adduce all the tax invoices for the purchases of those items. To illustrate this, the said list shows that the total monetary value of the 74 different items of varying capacities which are said to have been taken by the Judgment Creditor is UGX 429,180,501.32. However, the total value of the cost of the said goods attached and impounded as shown through the 14 tax invoices adduced is UGX 289,850,000. I will comment on the significance of this glaring disparity later on

in this decision, but, suffice to say that the Objector has only attempted to show the Court that it was the purchaser of construction/hardware materials worth only UGX 289,850,000 as opposed to the sum of UGX 429,180,501.32 claimed in the said Annexure F. As such there is a whole UGX 139,330,501 worth of hardware materials whose source is not accounted for by the Objector yet it has been claimed by the Objector.

Furthermore, the Objector presented a Trade License Certificate showing that Makindye Ssabagabo Municipal Council licensed it to carry on general trade at Lubowa Village, Bunamwaya Parish, Makindye Ssabagabo Municipal Council in the year 2022. I have also seen and analysed a copy of an operational permit brought by the Objector to this Court. It is said to have been issued by Makindye Ssabagabo Municipal Council on 16th January 2024 allowing the Objector to carry on general trade at Lubowa Village, Bunamwaya Parish, Makindye Ssabagabo Municipal Council for 2024. The other annexures to the Objector's affidavits are its Tax Identification Certificate, photos of the trucks and the materials loaded thereon on the day of the execution, its certificate of incorporation, its notice of beneficial owners, its notification of appointment of directors and secretary and its memorandum and articles of association.

On the other hand, the Judgment Creditor annexed to its affidavit in reply a copy of a demand notice alleged to have been written by the Judgment Creditor to the Judgment Debtor in 2020, copies of delivery notes for its steel products and a search report showing that the land on which the contested Lubowa business premises are located is registered in the names of "Ssendagire Charles Rhyz" who is a shareholder in the Judgment Debtor. The Judgment Creditor further brought a notice of situation of the registered office and postal address showing that the

Objector's registered office and postal address, from the Companies Registry, is "Uganda, Central, Kampala, Nakawa Division, Ntinda, Village 1". The Judgment Creditor also adduced a Police report dated 14th June 2024 guiding on how the impugned warrant was to be executed.

Finally, the Judgment Creditor adduced photos of the signposts stationed at the contested business premises in Lubowa. These show that the business on the premises goes by different names and these are "Muscle Construction Ltd", "Muscle Hardware" and "Muscle Hardware Store". There were also 2 receipts annexed to the Judgment Creditor's affidavit in reply purporting to have been issued by the business at the Lubowa property on \$27th October 2023 and \$28th June 2024. The 2 receipts bear the names "Muscle Hardware Store" and "Muscle Hardware", respectively. The Judgment Creditor relies on those receipts and photos in a bid to show and prove that the Judgment Debtor deliberately trades using different names in order to evade its liabilities, like the judgment debt in the main suit.

I have carefully and thoroughly analysed all the affidavits filed and the annexures thereto. The Objector's and the Judgment Debtor's primary contention is that they are distinct entities in law. They claim that the Objector is not liable for the Judgment Debtor's judgment debt and that, since the attached goods belong to the Objector, the same cannot be sold to pay that judgment debt. The Judgment Creditor's primary contention is that the attached goods belong to the Judgment Debtor and that they can be sold to recover the judgment debt.

It should be recalled that the judgment debt arose from the Judgment Creditor's supply of its steel construction/hardware materials to the Judgment Debtor. The Judgment Creditor's Sales Manager, Mr. Kaushal, averred in his affidavit that the Judgment Creditor used to deliver those materials to the Judgment Debtor at the said Lubowa business premises. The Judgment Creditor thus claims that the Objector and the Judgment Debtor interchangeably use varying business names in their transactions to evade their debts and liabilities.

The search report adduced by the Judgment Creditor proves that the land where the Lubowa business premises are located is not owned by the Objector but by a shareholder of the Judgment Debtor who, according to the Judgment Debtor's Memorandum and Articles of Association, owns 50% of the Judgment Debtor's authorised/allowed share capital. The Objector has not availed the Court with any explanation, and, or, evidence in proof thereof, as to how it came to occupy the Lubowa property and the nature of arrangement it has with that Judgment Debtor's majority shareholder to enable it carry on business at the property.

The Objector's notice of situation of registered office and postal address further shows that the Objector's registered office and postal address is not at the Said Lubowa property but at Ntinda in Nakawa Division. There is no evidence before the Court that the Objector has ever notified the Registrar of Companies of its alleged use of the Lubowa property for trade purposes. It is quite suspicious that a company incorporated and operating under the laws of Uganda can notify the Registrar of Companies that it carries on business in one place while it is actually carrying on its business in another place. I do not see how such a situation can be considered as justified or

even bonafide.

The purpose of Section 115 of the Companies Act which requires companies to inform the Registrar of Companies of their places of business or operation, as I understand it, is to ensure that everyone dealing with a company easily knows where and how to find it. It ensures certainty and trust in business relations with incorporated companies. People dealing with the company should know where to find it. One should be able to make a search at the Companies Registry so that one is availed with accurate information about a company's physical and postal address. A company should not misinform the Registrar of Companies about where it is actually situated. It is unfortunate that the Objector told the Registrar of Companies that it operates in Ntinda but then went ahead to only open shop in Lubowa. Apart from the fact that this conduct contravenes Section 115 of the Companies Act, it also points to the Objector's dishonesty. I am convinced that a businessman who lies to others that he operates in one place when he actually operates in another, definitely has something to hide.

I acknowledge Counsel for the Objector's argument on the practical difference between a registered office and postal address and a place of trade or business operation. I agree that the two may be different and that a company's place of trade or business need not be its registered office and postal address. However, in the instant case, the Objector has not claimed or adduced any evidence to prove that it has anything going on at its registered office in Ntinda or that it even has any office there in the first place. The Objector's evidence has simply been that it operates its business at the Lubowa hardware shop. It has made no attempt to illustrate and prove its Counsel's argument that it has an operational registered office in Ntinda while also holding a branch in Lubowa. The argument by counsel for the Objector implying that the objector has a registered office in Ntinda with a branch/place of trade in Lubowa is, thus, an unproven afterthought which is not borne out by the evidence.

I have taken very keen interest in the Objector's certificate of incorporation and in its Trade License Certificate. The certificate of incorporation shows that the Objector was only incorporated on 6th July 2023. This logically implies that the Objector was not in existence as a legal person before 6th July 2023. However,

9

the Trade License Certificate shows that in 2022, the Objector applied to Makindye Ssabagabo Municipal Council for a license to carry on general trade at Lubowa Village, Bunamwaya Parish, Makindye Ssabagabo Municipal Council. It also shows that the Objector made payment for that license on 16th December 2022 and that the Objector was authorised to carry on that general trade for the year between December 2022 and December 2023.

It is absurd that a company that was not in existence before 6th July 2023 applied for and secured a Trade License Certificate payment for which was even authenticated by the stamp of the Senior Assistant Town Clerk on 13th December 2022. Even if it was argued that the local councils do not necessarily always require a business to be an incorporated company before licensing or permitting it to operate, that argument would still not save the Objector in

this application because it is still illegal for a person/business to do anything, let alone obtain a license to trade, using the word "Limited" or the phrase "LTD" if it is not a company incorporated with limited liability as expressly stipulated in **Section 39** of the Companies Act.

It is trite law that a company obtains full maturity immediately upon incorporation. (See *Salomon v A. Salomon & Co. Ltd*, [1897] AC 22). As a general rule, a company cannot start trading before it is born through incorporation. I know that there is a narrow window under the common law and in Section 54 of the Companies Act through which the promoter(s) of a company can enter into contracts on the company's behalf even before it is incorporated. Nonetheless, as Section 54(2) and (3) of the Companies Act clarify, the promoter of a company is personally liable for any such contracts unless and until they are formally sanctioned and adopted by the company by resolution after its incorporation. In this application, the Objector has not laid any such resolution sanctioning and adopting acts that its promoters could have done before 6th July 2023.

I have no doubt that the Judgment Debtor has previously carried on the business of buying and selling hardware materials at the Lubowa property. This fact was confirmed by the Judgment Creditor's Sales Manager in his affidavit in reply. It was also corroborated by the Judgment Debtor's director in his affidavit in reply. This further makes it more probable than not that the Judgment Creditor was telling the truth when it averred that, during the performance of its contract of supply of construction and hardware materials from which the main suit arose, it used to deliver its goods to the Judgment Debtor at the Lubowa property and nowhere else.

The Judgment Debtor's director averred in his affidavit that the Judgment Debtor has since ceased to operate on the Lubowa property and that it indeed owns no other property in the Lubowa area. However, he did not explain or prove to the Court why the Judgment Debtor left, when it left, how it left, what stock it left with if any, where it went, what it has been up to since October 2022 when the judgment in the main suit was delivered and why there is no record of that said departure and shifting of business premises in the Companies Registry. The said director also neither suggested nor proved that the Judgment debtor has since been brought to an end through any liquidation process.

As such, there is simply no evidence corroborating the said director's claim that the Judgment Debtor has since left the Lubowa property and area for another location in Uganda. In view of all these unanswered questions, I am convinced that the Judgment Debtor has never left the said Lubowa hardware shop and it continues to operate there albeit under the guise/cloak of the Objector.

The other documents of great significance in the assessment of this application are the Memorandum and Articles of Association of the Objector. As rightly pointed out by Counsel for the Judgment Creditor, according to Clause 5 of the Objector's Memorandum of Association, the maximum amount of money the Objector can/could raise from the sale of its shares (authorised share capital) is UGX 1,000,000. The Objector did not adduce any evidence showing any other possible source of its funding. I am not sure how a company which could only raise UGX

1,000,000 from its shareholders on 6th July 2023 could be holding UGX 429,180,501 (approximately 429.181% of its authorised share capital) in working capital less than a year later on 27th June 2024. Since the Objector's financials have not been adduced before the Court, the Court is left to wonder how, except with the Judgment Debtor's presence and assistance, the Objector could have acquired such working capital yet it has not even been proved that its authorised share capital was ever paid up.

My penultimate consideration in dealing with this application is the historical context from which this application arose, as far as can be gathered from the record. It should be recalled that the judgment in the main suit was delivered on 14th October 2022. It appears that almost immediately thereafter, the Judgment Debtor went into total hibernation. Two months later in December 2022 (and over 6 months before incorporation), the then non-existent Objector surfaced for the first time and secured a Trade Licensing Certificate from the Makindye Ssabagabo Municipal Council which allowed it to operate a hardware business on the Lubowa land and premises that were, at that time, also being used by the Judgment Debtor to operate a hardware business and which were registered to the Judgment Debtor's majority shareholder as proprietor thereof.

On 13th January 2023, the Judgment Creditor filed Taxation Application No. 0133 of 2023 for the taxation of its bill of costs. On 31st May 2023, the Judgment Creditor filed an application to execute the decree in the main suit vide EMA No. 0233 of 2023. A little over a month later on 6th July 2023, the Objector was incorporated as a company under the laws of Uganda.

The Judgment Creditor's bill of costs vide Taxation Application No. 0133 of 2023 was taxed on 20th September 2023. EMA No. 0233 of 2023 was amended in November 2023 and later heard. On 27th May 2024, this Court issued a warrant for the execution of the decree in the main suit by attachment and sale of some of the Judgment Debtor's property/stock in its hardware shop at the Lubowa. The warrant was executed eventually on 27th June 2024 when agents of the Judgment Creditor went to the Lubowa property in the company of Police with trucks, entered the hardware shop thereon and carried away some construction materials in the shop.

It is my considered deduction from the historical context of the present dispute, as described in detail above, that the Objector was only incorporated to assist the Judgment Debtor evade the judgment debt in the main suit. After this Court delivered its judgment in the main suit condemning the Judgment Debtor to pay the Judgment Creditor UGX 219,337,601 in special damages, interest and costs, the Judgment Debtor decided to front another entity to be its face as it continues to do business in the Lubowa property while also evading the judgment debt. The Judgment Debtor hurriedly applied for and secured a Trade Licensing Certificate under the name of a company which was non-existent. After the Judgment Creditor applied to tax its bill of costs and also filed an execution application, the Judgment Debtor in response rushed and incorporated its sham company (the Objector) to concretize its hibernation.

\$12\$

Finally, I will consider the weight of the 14 tax invoices adduced by the Objector and contrast them with the list of the 74 materials taken in varying capacities. Firstly, I reiterate that the monetary value of the goods said to have been bought by the Objector through the 14 tax invoices does not tally with the value in the said list, and that there is UGX 139,330,501 worth of materials whose purchases are not evidenced by any of the tax invoices presented.

Second, as I noted earlier, all the said 14 invoices accounting for a total of UGX 289,850,000 worth of materials are said to have been issued at various dates within the 27 days between 1st June 2024 and 27th June 2024. It is very suspicious that all the invoices that the Objector adduced were only made and issued a few days after the Court had issued its warrant of attachment and sale of some of the materials in the hardware shop. My reading of these events, in view of the greater historical context of this dispute as earlier described, is that when the Judgment Debtor learnt of the 27th May 2024 warrant for attachment and sale of moveable property in its hardware shop, it decided to fill the shop with new stock all purchased in the name of its sham company, the Objector, so as to get justification to argue that all the goods in the shop belonged to the Objector. If the tax invoices were to be believable and persuasive, the Objector would have adduced some other tax invoices for purchases it made before the issuance of the warrant.

Third, in any case, the 14 tax invoices, in and of themselves, do not confirm that the Objector actually made the purchases as alleged. I acknowledge that such tax invoices ordinarily show the existence of a contract to purchase goods or services as would be stated therein. However, to conclusively prove and confirm that those purchases occurred and that the parties followed through with their respective contracts, the Applicant should have adduced proof of payment for those said purchases or even proof of payment of the said assessed Value Added Tax in those invoices. An invoice will confirm a contract between parties over a good or service, but, it will not confirm that the parties actually followed through with that contract and exchanged the agreed consideration. For that reason, the Court is not able to find that the Objector actually concluded the transactions evidenced by the 14 invoices, or even that any of the attached goods had been brought into the hardware shop as a result of the purchases in those 14 invoices. As counsel for the Judgment Creditor rightly submitted, the 14 tax invoices leave many questions unanswered. Apart from not proving exchange of consideration, they also do not prove delivery of the goods said to have been purchased therein to the Lubowa hardware shop. The tax invoices may very well be genuine and legitimate, but there is no proof that the goods in respect of which they were issued were actually delivered to the Lubowa hardware shop or even that they are the ones the bailiff found in the shop. This uncertainty is worsened by the fact that the Objector seems to have two official business premises with one in Lubowa and another in Ntinda.

Fourth, even if this Court was to accept the Objector's contention that the 14 invoices constitute evidence that it was the purchaser and owner of the attached goods, I have already found that the Objector was, at all material times, a cloak for the Judgment Debtor's evasion of the judgment debt. Although the invoices show that it is the Objector who purchased those goods, the evidence laid before this Court also confirms that the Judgment Debtor is the true owner of the goods and the hardware shop where they are traded in Lubowa.

The true test to be applied by courts in dealing with objector applications of this nature as earlier set out is whether or not an objector, at the time of attachment, held the attached property on his own account or on account or in trust for another person. In that sense, even though in the latter alternative hypothetical the Objector would have been the owner of the attached goods, it is would be holding those goods on account of and in trust for the Judgment Debtor.

All these findings fatally ruin the credibility of the Objector's case I am satisfied that the Objector is a mere cloak/sham engineered by the Judgment Debtor to evade the process of this Court by refusing to settle the judgment debt in the main suit.

I am in agreement with the decision of this Court in the case of Mohammed Razi Raza v Commercial Bank of Africa & Anor, HCMA No. 0264 of 2022 which was relied upon by counsel for the Judgment Creditor. That case considered a factual dispute which, like the present case, involved a judgment debtor who had purported to dispose of his property in anticipation of execution so as to put it out of the judgment creditor's reach. The Court reiterated the trite general position of the law that a transfer of property made with the intent to delay or defeat the creditors of the transferor is voidable at the option of the creditor so

defeated. The Court confirmed that, when there is evidence to show that the objector and the judgment debtor colluded, with the latter alienating property belonging to him which is under attachment to the former with a view to taking it out of the reach of the court executing a decree against the judgment debtor, the transaction will be voided. The Court went on to say:

"... Debtors who are trying to cheat their creditors will always have some cover story to deny that fact, and instead of simply adopting the debtor's subjective and self-serving denials, the court should look to the surrounding circumstances which indicate that one party is trying to hinder or defraud another party (Badges of fraud) to objectively determine the debtor's actual intention in making the transfer.

Badges of fraud are "accompanying circumstances tending to excite suspicion and distrust as to the bona fides of the challenged conveyance and which, standing unexplained, may warrant an inference of fraud" ... In evaluating the existence of fraud, courts look to the judgment debtor's entire course of conduct and no particular "badge" or indicator is essential or determinative. In fact, in any given case, the court may consider the existence of one badge to be sufficient to establish fraud, and certainly, the existence of multiple badges together increases the judgment debtor's exposure. A concurrence of several badges always makes a strong case for fraud. If there was an intention to defeat creditors, then it does not matter whether it was to defeat present or future creditors..." Emphasis mine.

The Court further clarified that suspicious circumstances which the courts may characterize as "badges of fraud" include secrecy surrounding the transaction, the absence of any change in possession after the conveyance, the transfer to a non-arm's-length person, grossly inadequate compensation paid, knowledge of the creditor's claim and the lack of accurate documentation for the transaction, among others. The Court applied these rules and principles to the facts before it and concluded that the alleged transfer of property by the judgment debtor to the objector before it was marred with many badges of fraud which rendered it void.

Similarly, in the instant application, I find that the Objector's case is overflowing with badges of fraud as I have highlighted in my earlier detailed analysis. Even before its birth, the Objector before me was already engaging in dishonest and illegal acts of trading as a company when it was not incorporated as such. After its incorporation it told the Registrar of Companies that its office is in Ntinda yet it had already set up shop in Lubowa. It allegedly operates in the same premises which the Judgment Debtor used to operate in and carries on the same business as the Judgment Debtor, albeit without any documentation showing the relationship between the two of them yet its said business premises are legally owned by the Judgment Debtor's majority shareholder.

Furthermore, there is no corroboration for the Judgment Debtor's claim that it has since left the Lubowa shop nor any evidence that it left with its stock, enabling the Objector to come in with its own. It is not clear which stock belonged to the Judgment Debtor and which stock the Objector brought in. It is unclear where the Objector starts and stops in the shop since the Judgment Debtor seems to never have left. When the warrant of attachment and sale was issued by this Court, the Objector hurried to stock up the shop so that the court bailiffs would not find anything in the shop in the Judgment Debtor's name. Nonetheless, even the tax invoices adduced for that new stock do not account for all the materials said to have been taken in execution. As I remarked earlier, the Objector's case is filled to the brim with badges of fraud. This confirms to me that this application is just a cleverly orchestrated ploy intended to put Judgment Debtor's property out of this Court's reach.

Counsel for the Objector cautioned the Court against deciding this application basing on conjecture as opposed to cogent evidence. That caution is noted but I am convinced that *Mohammed Razi Raza v Commercial Bank of Africa & Anor* (supra) which prescribes the 'badges of fraud' test for assessing and deciding an objector application of this nature remains good law in view of Section 8 of the Evidence Act which allows the Court to admit and rely on all relevant evidence of inferences and circumstances in deciding cases before it. It should further be clarified that, in applying the badges of fraud test, the Court is not bound to make a finding on the existence or non-existence of fraud per se in an objector application, which fraud may not have been pleaded. The Court would simply be required to thoroughly investigate the genuineness of the Objector's claim to the attached property to find out if that claim is suspicious or if it is bonafide. In applying that test in this case, that is all this Court has done.

Reliefs

It is trite law that court orders are not issued in vain. As the Judgment Creditor severally emphasised, it is also trite law that a successful party in litigation ought to enjoy the fruits of his or her judgment. Unfortunately, the Judgment Debtor and the Objector cleverly crafted a disingenuous scheme abusing the legal principle of separate corporate personality of companies to ensure that they make the judgment of this Court in the main suit useless, moot and inconsequential.

In accordance Order 22 Rule 58 of the Civil Procedure Rules, it is my considered decision not to order the release the attached goods from attachment since they were, at the time of the attachment, in the Judgment Debtor's actual possession. I am also convinced that, even if it had been argued and proved that the attached goods were, at the time of the attachment, in the possession of the Objector, they would have been in the Objector's actual possession but in the Judgment Debtor's constructive possession since it is the Judgment Debtor who continues to pull the Objector's strings behind the curtains. The attached goods are, therefore, liable to attachment in satisfaction of the decree in the main suit.

Consequently, this application fails and I make the following orders:

- This application is hereby dismissed. i.
- Costs of this application are awarded to the Judgment Creditor. ii.

neadenles

Patricia Mutesi JUDGE \$(27/08/2024)\$

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugcommc/2024/260/eng@2024-08-27>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/muscle-construction-limited-v-bavima-steels-limited-miscellaneous-application-1256-of-2024-2024-ugcommc-260-27-august-2024-and-others-unknown-topic-un--6a3ea4da3b1caa91297e78b7>

Prepared on 14 October 2026 · Esheria