

UGANDA / JUDGMENT

Olara v Omony (Miscellaneous Application 2 of 2022) [2023] UGHCCD 289 (5 October 2023)

[2023] UGHCCD 289

COURT

HC: Civil Division (Uganda)

BEFORE

Okello, J

CASE / FILE NUMBER

Miscellaneous Application 2 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU MISCELLANEOUS
APPLICATION NO. 02 OF 2022 (ARISING FROM MISC. APPLICATION NO. 01 OF 2022)
OLARA DENIS MICHAEL.....

VERSUS

OMONY STEPHEN KHESMODEL.....

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\$10\$

\$15\$

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

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RULING

The Applicant lodged the application for stay of execution of the consent decree entered in Civil Suit No. 36 of 2021, pending the determination of the application in Miscellaneous Application No. 1 of 2022, for setting aside consent judgment. The consent judgment was entered into by the 30 parties in the head suit on 10th December, 2021 and was endorsed by the Deputy Registrar of court on 23rd December, 2021. The head suit was based on contract breach. The Respondent had advanced a loan of Ugx 150,000,000 to the Applicant, a longtime

friend. The parties executed a memorandum of agreement for the loan on 10th January, 2020. The Applicant would repay the money within three months from 10th January, 2020. The Applicant would also pay a fixed sum of Ugx 33,000,000, as

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$\$S$ interest, at the time of repaying the principal amount. If the Applicant should fail to keep within the agreed repayment period and default by one week, the principal sum plus interest would attract 10% charge which would continue accruing until the principal and interest are repaid. The parties provided for court redress in the event of default. The applicant pledged certificate of title for mailo land and sale agreements for other 10 pieces of land, as security. It is apparent the Applicant did not honour his part of the bargain, hence the suit against him. In the suit, the Respondent sought to recover Ugx 507,400,000, being the principal sum, and interest. He also prayed for general damages, 30% interest on the liquidated sum, and costs. The Applicant did not file a Defence. The parties executed 15 consent judgment on 10th December, 2021. They agreed that the Applicant (Defendant) would pay a consolidated sum of Ugx 347,700,000 (and not Ugx 507,400,000 which was sued for). The amount would be paid in the following terms, namely, Ugx 120,000,000 to be paid on 31st January, 2022 (about 52 days after the consent date); Ugx 63,000,000 to be paid on 20 31st March 2022 (60 days after the first payment); and the remaining balance of Ugx 164,700,000 would be paid in instalment of Ugx 10,000,000 every month, but effective June, 2022 till 2023 December. It is apparent there was default by the Applicant. He did not honour the agreed schedules of payment. This prompted notices to show cause why 25 execution should not issue. The Notices yielded some fruits, as the

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Applicant paid the aggregate sum of Ugx 175,000,000, leaving a balance $\$S$ of Ugx 172,700,000, which both parties do not contest.

The Applicant lodged Miscellaneous Application no. 01 of 2022, seeking to have the consent judgment set aside. He also lodged the present application for stay of execution, pending the disposal of the main application. Whereas the present application was first fixed for hearing on 19th January, 2023, it did not take off, as court was indisposed and the matter was to be given a fresh date. The Applicant did not pursue the fixing of the matter further, until the Respondent moved court and had it fixed and served on the Applicant. The matter then came up for hearing on 7th July, 2023, and 13th July, 2023. The parties filed written submissions. It appears the apprehended court execution has not happened, given the file before the Deputy Registrar was all placed before this court, thus forestalling any execution process till the main application is disposed of. The Respondent opposes the instant Application.

The Applicant was represented by Mr. Okot Michael Obalo who did not appear but lodged submission, while Mr. Akena Kenneth Fred appeared for the Respondent. Court perused both submissions and is grateful.

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HUAOQ...

$\$S$ This court however notes that, it has already disposed of the application for setting aside the consent judgment, by dismissing it. In the circumstances, the present application for stay of execution is over taken by the events and there is no point in determining it on merit. Accordingly, the application for stay of execution is dismissed with no order as to costs.

\$10\$

Before taking leave of this matter, as the parties claim to be friends, it would be in order if the parties could agree on some workable terms for the Respondent to realize the outstanding debt, without the necessity of the parties engaging in the costly process of court execution, if it can be avoided. Otherwise, there is no bar to execution of the decree of this court, unless the Respondent agrees not to.

Delivered, dated and signed in Court this 5th day of October, 2023.

Hutodur 05/10/2023 George Okello **JUDGE HIGH COURT**

\$4\$

\$20\$

Ruling read in Court $\$S$

10:45am

5th October, 2023

\$10\$ Attendance

Ms. Akello Nancy Onono, holding brief for Mr. Michael Okot Obalo, Counsel for the Applicant.

Counsel for the Respondent (Mr. Akena Kenneth Fred) absent. Parties absent.

15 Mr. Ochan Stephen, Court Clerk.

> George Okello OS 10 RD23 **JUDGE HIGH COURT**

\$20\$

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