

UGANDA / JUDGMENT

Pentecostal Assemblies of God Ltd v Mukalu and Another (Miscellaneous Application No. 290 of 2022) [2023] UGHCCD 72 (31 March 2023)

[2023] UGHCCD 72

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Miscellaneous Application No. 290 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 0290 of 2022

(ARISING FROM EXECUTION MISCELLANEOUS APPLICATION NO. 14 OF 2022)

(ARISING FROM CONSOLIDATED CIVIL SUITS NOS 97 & 290 OF 2015)

PENTECOSTAL ASSEMBLIES OF GOD LIMITED:.....APPLICANT

VERSUS

- **1. JOEL MUKALU**
- **2. PENTECOSTAL ASSEMBLIES OF GOD:.....RESPONDENTS LIRA LIMITED
(DEREGISTRED)**

BEFORE: HON. JUSTICE SSEKAANA MUSA**RULING**

The applicant was the successful party in **Civil Suits Nos. 97 & 290 of 2015**, **vide** the judgment of this court delivered on 1st November 2019. A court decree dated 6th November 2019 was duly extracted for execution. The 2nd respondent appealed to the Court of Appeal, which appeal failed and was dismissed with costs. A decree of the Court of Appeal judgment dated 20th October 2021 was duly extracted.

The Court of Appeal in its judgment did not substitute the judgment and decree of the High Court, however, the appellate court largely adopted the orders of the High Court, but made no order on the return of the applicant's (1st respondent in the appeal) properties illegally held by the 2nd respondent (the appellant in the appeal).

The decree of the court was partially complied with by the deregistration of the 2nd respondent by Uganda Registration Services Bureau (URSB), payment of the aggravated damages awarded by court, the taxed costs of the suit in the High Court and Court of Appeal, only leaving the order of the return of properties as outstanding and not being satisfied.

The applicant in Execution Application No. 014 of 2022 applied to the High Court for execution of the High Court Decree and specifically Order No. (4) of the High Court decree dated 6th November 2019 to effect that:

****"4) An order that all properties in the names of the plaintiff and illegally held by the 1st defendant should be returned to the plaintiff forthwith."****

The said order was not set aside by the appellate court. Following the deregistration of the 2nd respondent, the 1st respondent as a former director has remained in control of the affairs of the deregistered company, as demonstrated in the partial satisfaction of the High Court and Court of Appeal decrees. Without the court's issuance of the consequential order sought, the order of this court in the High Court decree dated 6th November 2019 will remain unsatisfied infinitely and be rendered futile.

The applicant, therefore, filed this application under Section 33 of the Judicature Act cap 13, Sections 34 (1), 92 and 98 of the Civil Procedure Act Cap 71, and Order 52 Rules 1 & 3 of the Civil Procedure Rules Si 71—1 for the following orders :

- **(1)A consequential order doth issue against the respondents, their agents, permitted assigns and beneficiaries that the following properties which belong to the applicant are liable for execution vide Execution Miscellaneous Application No. 014 of 2022:**
- **i. LRV 2916 Folio 4 Plot 36-40 & M. 25 Agwata Road, Lira Municipality.**
- **ii. Plot M. 26 Kioga Road, Lira Municipality.**
- **iii. Plot 4-12, Okori Olero Road at Ireda Shamba.**

- *iv. Plot 89-97 Ogwal Aconga Road, Kakoge 'B', Ojwina Division.*
- *v. Pentecostal Assemblies of God Limited churches under the Lira Pastorate situate on untitled customary land and listed on annexure "A3" to the affidavit in support of the application.*

(2) Costs of this application be borne by the respondents.

The application was supported by the affidavit of **ONAGA JACKY FRANCO**, the General Secretary of the applicant.

The parties were directed to file submissions that were considered by this court.

The 1st respondent opposed the application and raised 2 preliminary points of law that is:

- 1. This applications is illegal, bad in law, irregular and an abuse of court process.
- 2. That the application does not disclose a cause of action against the 1st respondent.

The following issues were framed for determination by this court;

- *(1) Whether this is a proper application for the grant of the consequential order sought?*
- *(2) What remedies are available to the parties?*

The applicant was represented by *Lastone Gulume* while the respondents were represented by *Kigenyi Emmanuel, Etuk Gerald and Elot Dennis*.

The preliminary points of law raised by counsel for the 1st respondent shall be resolved under issue 1.

Determination

Whether this is a proper application for the grant of the consequential order sought?

The applicant seeks a consequential order against the respondents, their agents, permitted assigns and beneficiaries that the following properties which belong to the applicant are liable for execution vide Execution Miscellaneous Application No. 014 of 2022:

- i. LRV 2916 Folio 4 Plot 36-40 & M. 25 Agwata Road, Lira Municipality.
- ii. Plot M. 26 Kioga Road, Lira Municipality.
- iii. Plot 4-12, Okori Olero Road at Ireda Shamba.
- iv. Plot 89-97 Ogwal Aconga Road, Kakoge 'B', Ojwina Division.
- v. Pentecostal Assemblies of God Limited churches under the Lira Pastorate situate on untitled customary land and listed on annexure "A3" to the affidavit in support of the application.

The applicant was the successful party in **Civil Suits Nos. 97 & 290 of 2015; Pentecostal Assemblies of God Limited vs Pentecostal Assemblies of God Lira Limited and Uganda Registration Services Bureau**. The 2nd respondent appealed to the Court of Appeal, which appeal failed and was dismissed with costs.

The Court of Appeal largely adopted the orders of the High Court. A decree was extracted and partially fulfilled only leaving the order of the return of properties as outstanding and not satisfied. The High Court decreed that **all properties in the names of the plaintiff and illegally held by the 1st defendant should be returned to the plaintiff forthwith** which order has not been satisfied. This order was not set aside by the court of appeal in its judgment.

The applicant contends that the respondents have not returned the applicants properties to date. The respondents objected to executing the judgment of this court stating that the appellate court had not pronounced itself on the issue of properties and that the judgment of the trial court did not list the properties that are to be returned to the applicant.

According to S.98 of the Civil Procedure Act, this court has inherent powers **"to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court."*

Further, where questions relating to the execution of a decree arise between parties to a suit, the court executing the decree has the jurisdiction to settle such questions without filing a separate suit under **Section 34 (1)** of the Civil Procedure Act. The said provision is to the effect that: -

**All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution*, *discharge, or satisfaction of the decree*, *shall be determined by the court executing the decree and not by a separate suit.*"*

In these circumstances, the applicant was the successful party in **Civil Suits Nos. 97 & 290 of 2015** and is entitled to the fruits of that judgment which can only be obtained through an application for consequential orders.

Consequential order denotes an order following naturally in terms of consistency and giving effect to the main judgment. Therefore, it is an order following from the judgment. It is essentially one which makes the principal order effective and effectual or which necessarily as being incidental to the principal order in the matter. **See Registered Trustees of Apostolic Church v Okorolemi (1990) 6 NWLR (pt 158)15**

This court gave the following order in general and broad terms;

****A declaratory order that all properties registered in the names of the plaintiff and illegally held by the 1st defendant should be returned to the plaintiff.*"***

It follows from this order that there is need for a consequential founded and derived from the judgment and final order given in those terms. In other words, this consequential order is not merely incidental to a decision properly made, but one which is merely to give effect to that decision.

The consequential order sought in this matter would give effect to a judgment. It gives meaning to the judgment since it is traceable and flows directly from the judgment and is consequent upon the reliefs claimed and decreed to the applicant/plaintiff. It is an offshoot of the main claim and it owes its existence to the main claim. It gives effect to the judgment already given. *See Eze v Gov. Abia State (2014) 14 NWLR (pt 1426) p. 194*

It suffices to note therefore that the 1st respondent's preliminary objection that the application is illegal, bad in law, irregular and an abuse of court process lacks merit.

On whether the application discloses a cause of action against the 1st respondent, I concur with the applicant's submission that he is a necessary party to this application since he has participated in all the litigation leading up to this application, and the attachment sought vide EMA No. 14 of 2022 would be prejudicial to him if issued without a fair hearing. In addition, if excluded from the proceedings before the court and EMA No. 14 of 2022, the 1st respondent and his agents would lodge numerous applications to set aside the proceedings and order contending that he was not heard.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.

The said property which was illegally held in company which was deregistered and is now not recognized in law would now have vested in individual members like the 1st respondent. The actions of the 1st respondent to refuse to return the properties would be contemptuous of the order of court since it was a clear order which has never been appealed or overturned.

The said declaratory order cannot be defeated on flimsy arguments which the 1st respondent counsel is putting forward in case. *A declaratory order that all properties registered in the names of the plaintiff and illegally held by the 1st defendant should be returned to the plaintiff.*" This order was alive to the fact the 1st respondent or the membership of the deregistered company-2 nd respondent are holding onto the property illegally and the same ought to be returned to the rightful owners (applicants)

This is therefore a proper application for the grant of a consequential order.

The consequential orders applied for by the applicant to issue.

This court therefore issues a consequential order in the following terms;

The respondents should return all properties registered or acquired in the names of the plaintiff and is illegally held by the respondents or their agents or assignees which are listed below;

- *i. LRV 2916 Folio 4 Plot 36-40 & M. 25 Agwata Road, Lira Municipality.*
- *ii. Plot M. 26 Kioga Road, Lira Municipality.*
- *iii. Plot 4-12, Okori Olero Road at Ireda Shamba.*
- *iv. Plot 89-97 Ogwal Acong Road, Kakoge 'B', Ojwina Division.*
- *v. Pentecostal Assemblies of God Limited churches under the Lira Pastorate situate on untitled customary land and listed on annexure "A3" to the affidavit in support of the application.*

Costs of the application are also granted to the applicant.

I so order

SSEKAANA MUSA JUDGE 31st March 2023

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