

UGANDA / JUDGMENT

# Ssemiganda Henry v Omar Haniff and Others (Miscellaneous Application 207 of 2022) [2025] UGHC 511 (7 July 2025)

[2025] UGHC 511

## COURT

High Court of Uganda

## BEFORE

Joanita Bushara, J

## CASE / FILE NUMBER

Miscellaneous Application 207 of 2022

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## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA AT JINJA

## HCT-03-CV-MA-207-2022

(ARISING FROM MISCELLANEOUS APPLICATION NO.214 OF 2017)

(ARISING FROM HCT-03-CV-CS-086-2017)

SSEMIGANDA HENRY :::::::::::::::::::::::::::::: 10

## VERSUS

OMAR HANIFF :::::::::::::::::::::::::::::: JUDGMENT CREDITOR/RESPONDENT

## AND

- 1. AKAMANYA MARVIN
- 2. IDI LUBINGA
- 3. DERRICK MUBIRU KIJJAMB:::::::::::::::::::: JUDGEMENT DEBTORS/RESPONDENTS
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\$15\$

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**BEFORE: HON. LADY JUSTICE BUSHARA JOANITA****RULING**

By Notice of motion this Application is brought under Sections 98 of the Civil Procedure Act, Cap 282, Order 22 rule 55, 56 and 57 and Order 52 rule 1, 2 & 3, of the CPR SI 71-1 for orders that: \$-\$

- 1. The land comprised in Busiro Block 182 Plot 188 Bulondo Wakiso District be released from attachment as security for appearance of the Respondents and fulfillment of any decree that may be issued in the main suit.
- 2. The purported attachment of the above said property be nullified.
- 3. The Costs of this Application be provided

The above stated grounds are reiterated in the Affidavit in Support of the Application by the applicant Ssemiganda Peter, the gist of which are that:-

1. The Applicant/Objector is a lawful owner /and the registered proprietor of the attached land comprised in Busiro Block 182 Plot 188 land at Bulondo.

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- 2. On 11th October 2014, he purchased the suit land from a one Akamanya Marvin at a consideration of UGX. 110,000,000/= (One Hundred Ten Million Shillings Only).
- 3. A transfer of the said land was duly executed and he was entered on the Certificate of Title on the 23rd December 2014 vide instrument No WAK 00036141.
- 4. Upon purchase of the suit land, he immediately took possession of the same and set up a poultry farm among others.
- 5. Sometime in 2019-2020, he wished to deal with his land and when he made a search, he found a court order issued by the High Court of Uganda vide MISC. APPLICATION NO. 314 OF 2017 (ARISING FROM CIVIL SUIT NO 86 OF 2017) attaching the suit land as security for appearance of the Respondents and fulfillment of any decree that may be issued in the main suit. A copy of the Order is hereto attached and Marked as annexure "C".
- 6. He was surprised to discover that the respondent obtained the above mentioned order from this honourable court attaching properties in Wakiso.
- <sup>7</sup>. The Applicant/ Objector was and has been in possession of the suit land at the time of the attachment.
- 8. The Applicant/Objector is neither a party in the suit between the Respondents nor indebted to the Decree holder.

- 9. There is a likelihood of the attached property being sold and or put <sup>60</sup> in possession of a 3rd party and the objector loss if the said property is not released from a will irreparable t.

10. That with the above mentioned attachment of the suit land, he is unable to carry out his farming project. to transact on the same so as to re-capitulate.

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65 II. He does not know the whereabouts of the Respondents and that the Respondents have never disposed of the main suit to wit; Civil Suit No 86 of 2017 before this honourable court.

## Background

The applicant/objector brings this application under order 22 rule 55 of the Civil Procedure Rules seeking release of property comprised in Busiro Block 182 Plot 188 land at Bulondo Wakiso District from attachment in execution of decree that may be obtained from Civil Suit No.86 of 2017.

The applicant avers that he lawfully purchased the suit property from the Judgment debtor in the year 2014, and has since taken possession and effected developments thereon. The sale was duly executed through a sale agreement and all necessary transfer documents and title were lodged and effected in the applicant's name. The applicant contends that at the time of the said transaction, the judgment creditor had no known claim against the judgment debtor, and that the property no longer belonged to the judgment debtor at the time of its attachment.

The objector further argues that the attachment is illegal and wrongful as it affects property no longer owned by the judgment debtor. The application is thus made to protect the objector's proprietary interest and to prevent unlawful deprivation of property. 80 o

## Representation

The applicant was represented by Mr. Fred Takwara of Ml Takwana Matovu Munyambabazi & Co. Advocates, while the objector never filed a reply to the application. Both parties were directed to file written submissions and the applicants complied, which submissions <sup>I</sup> 90 appreciate

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## Submissions

In his submissions the applicant raised the following issues;

1. Whether at the time of attachment before judgement, the objector was in possession of land comprised in Busiro block 182 plot 188 land at Blondo Wakiso district.
2. Whether the possession was in the objector's own right or on account of the judgement debtor.

### 3. Whether the objector is entitled to the prayers sought in the application?

It was submitted by counsel for the Applicants on issue 1 and 2 jointly that the law on Objector proceedings has long been established under our laws and it's obvious that in objection proceedings, the sole question to be investigated by court is one of possession. To expound more on the above question, court will ask itself whether on the date of the attachment, the judgment-debtor or the objector was in possession of the attached property and once court is fully satisfied that the property was in the possession of the objector, it must be found whether he or she held it on his/her own account or in trust for the Judgment debtor. (See Haril & Co. vs. Buganda Industries Ltd [1960] EA 318 and Trans Africa Assurance

### Co. Ltd vs. NSSE, SC. Civil Appeal No. 1 of 1999)

That under Order 22 rule 56 of the Civil Procedure Rules requires the objector to adduce evidence to show that at the date of attachment he had "a measure of interest" in the property be it legal or equitable. The term possession as used in **Order 22 r 57** denotes physical retention of control possession as used in **Order 22 r 57** denotes physical retention of control  $\frac{1}{2}$  exercised by an individual over a given thing or property.

In the supporting affidavit, the objector has provided ample evidence under paragraph 3, 4, 5 and 6 that he is the lawful owner of land comprised in

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L20 Busiro Block L82 Plot 188 land at Bulondo Wakiso district, having purchased the same on the 1<sup>st</sup> October 2014 from a one Akamanya Marvin at a consideration of UGX 110,000,000/- (One Hundred Ten Million Shillings Only) and this evidence is amplified in attachment "A" which is a land sale agreement dated 11<sup>th</sup>, October 2014 between the objector and the said Akamanya Marvin.

o L25 130 Counsel for the applicant argued further that evidence has been presented by the objector to the effect that after purchase of land comprised in Busiro Block t82 Plot I8B land at Blondo, he had the said land successfully transferred into his names on the 23<sup>rd</sup> day of December 2014 under instrument number WAK 00036141 and this evidence is crystal clear from the annexure "8" to the supporting affidavit which is a photocopy of the certificate of title for land comprised in Busiro Block 182 Plot 188 land at Blondo.

135 1,40 Also, the other piece of evidence from the objector is that after the purchase of land comprised in Busiro Block 182 Plot 188 land at Bulondo, he immediately took possession of the same and set up a poultry farm among other activities he carries on the land. Further that in between 2019 and 2020, the objector wished to deal with his land and conducted a search on his land whereupon he discovered that the respondent has obtained a court order dated 16th July 2017 from the High court of Jinja Vide: Under Miscellaneous Application No. 314 of 2017 (Arising from Civil Suit No. 86 of 2017) in which land comprised in Busiro Block 182 Plot 188 land at Bulondo was attached as security for a of the defendant / judgment debtor Akamanya Marvin and the annexure C" and that his property was wrongly attached o order is the said L45 Order

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That from the foregoing, it's evident that the land comprised in Busiro Block 182 Plot 188 land at Bulondo Wakiso district was held in the possession of the objector at that the time of attachment and that the objector held the said property on his own account and not that of the 1st judgement debtor Akamanya Marvin, who had sold the same to the objector on the 4th day of October 2014 and signed the objector transfer forms which resultantly in December 2014, the objector was able to transfer the certificate of title into his name. It has been the evidence of the objector that after purchase of land comprised in Busiro Block 182 Plot 188 land at Bulondo Wakiso district, he immediately took possession of the same and set up a poultry farm thereon. This evidence was not challenged by the respondent and thus is deemed admitted.

They submitted therefore that, the expression "possession" is a legal term and its proof varies with the nature of property under the scrutiny of the 160 courts and it can be proved by credible oral evidence as well. Possession may be actual or constructive. For purposes of objector proceedings in this application, the objector had constructive possession of the said land as the legal registered owner, having purchased the same from the judgement debtor and also had in use of the said land for poultry use and thus was fit in actual possession. U

Counsel for the applicant contended that all the above evidence amply answers issue No. 1 and 2 above and in light of order 22 rules 56 of the Civil Procedure rules, the objector has discharged his duty which requires of him to adduce evidence to show that at the date of attachment to wit: 16th July 2017, he some interest the property that was by the judgement creditor. The emphasis is on the date of attachment and the

objector must show his or her interest in the attached on that

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date of attachment and therefore to that effect, the judgement has proved that he was in possession of land comprised in Busiro Block 182 Plot 188 land at Bulondo Wakiso district on his own account and not on account or on trust of the judgement debtor, at the time of attachment of the said land.

**ISSUE 3:**

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**Whether the objector is entitled to the Prayers sought in the application? 180**

Counsel for the applicant submitted that the Court is bound to order the release of the attached property if it finds possessions in the objector and possession is on his account. Court will accordingly order a release of the attached property.

- 18s And under Order 22 rule 60 of the Civil Procedure Rules, the question of ownership will not dealt into by a court investigating possession instead any party wishing to determine the question of legal ownership shall be at liberty to institute a suit so as to establish the right which is claimed in the objection proceedings.
- 1so Therefore, they submitted that the questions of legal right and title over any attached property are not relevant to objector proceedings, except in O 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.

Counsel further argued that he was also aware that this court is prohibited <sup>195</sup> from going into complicated or the investigation of complicated stions laying stions such as fraud, trust and so on; instead a person questions of such claims has the right to have the whole matter and all que suit. which are in dispute fully investigated in an ordinar5r

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That under Order 22 rule 57 of The Civil Procedure Rules, the Court has the mandate to release property from attachment once satisfied that it was not in the possession of the judgment debtor or in possession of the objector on account of or in trust of the judgment debtor. (See Khakale E. t/ a Neut Dlgon Textiles u, Bo;ttuamlnl W (tn the matter of MugunJo) [19761 HCB 37 and Kasozl Ddamba as M/s Male Constntctlon Seraice 200

**Co. [7e81] HcB 26). 205**

> The applicant prayed that this court be pleased to have land comprised in Busiro Block 182 Plot 188 land at Bulondo Wakiso district released from attachment with immediate effect and the costs of the application be provided for by the respondent.

**zro Determination**

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I have carefully analyzed this submission and prayers made. The settled position is that ownership or possessory interest at the time of attachment must be established. The objector bears the initial burden to prove their interest. If proven, the burden shifts to the decree holder to show fraud or collusion.

In *Frll;ncls Odong us (Iganda Reaenue Authorttg & 2 Others (HCT-04- CV-MC-0058-2007)*, tln court held that in objection proceedings under Order 22 Rule 55 CPR, the key question is who was in possession or ownership of the property at the time of attachment. The objector must establish a legal or equitable interest in the property.

Also In *Mugenjt & Co Adaocates as Attorneg General [79991 36*. The court emphasized that the objector must prove their stona balance of probabilities, and if satisfied, the court will the property zzs from attachment



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*Frdncls Kato Vs Stanblc Bank (U) Ltd, & Another IICCS No, 435 of 2070*, the court reiterated that a bona fide purchaser of land with <sup>a</sup> registered interest prior to attachment has enforceable rights, and the property is not liable to execution against the judgment debtor.

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### **Ra,shld us . I(csstm [7963] EA 798**

Possession and ownership at the time of attachment were emphasized as determining factors.

This would allow the court to analyze the reasons and determine whether <sup>235</sup> they are fair and do not prejudice the applicant.

240 From the evidence on record, the objector annexed a sale agreement dated 11th October, 20214 marked as annexure 'A' to the Affidavit in Support of the Application, a photocopy of a certificate of title in his nēune of land comprised in Busiro Block 182 Plot 188 vide instrument No. WAK 00036141 registered in the narne of the applicant on 23.12.2014 marked as annexure B to the affidavit in support of the Application.

<sup>245</sup> Further, the Respondents' /Judgment debtors did not file an affidavit in reply to rebut the applicant's averments. In the case of *Wllltqm Akclnkutcsr us the Reglstrar of Ttle*, Hon. Lady Justice Percy T\,rhaise (as she then was) held at page 4 that .tlrc facts as adduced in the affidauit evidence of ...ttrc applicant which are neither denied nor rebutted are presumed to be admitted". a 250

The Respondents did not file an affidavit in reply; ore, this court by the applicant takes it to be an admission of the averments as

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According to available evidence on this Application, I find it satisfactory 255 that the property was sold to the objector in 2014, long before the decree in question was passed. The applicant has demonstrated a clear interest and possession in the suit property.

**The respondent has not adduced cogent evidence to rebut this or prove fraud or collusion. 260**

Accordingly, this court finds that the objector has established his/her ownership of the property and that the attachment was wrongful. I therefore find that it is in the interest of justice to allow this application with the following orders; -

- a) The application is allowed.
- b) The attachment of the property comprised in Busiro Block 182 Plot 188 is set aside.
- c) The said property is hereby released from attachment.
- d) The Respondents shall bear the costs of this application.

I so order

**Dated at Jinja this 7<sup>th</sup> day of July 2025**

**JOANITA BUSHARA JUDGE**

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Prepared on 12 October 2026 · Esheria