

UGANDA / JUDGMENT

Twetise v Lyu & Another
(Miscellaneous Application 469 of 2023)
[2024] UGHCCD 72 (11 March 2024)
[2024] UGHCCD 72

COURT

HC: Civil Division (Uganda)

BEFORE

Baguma, J

CASE / FILE NUMBER

Miscellaneous Application 469 of 2023

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

[CIVIL DIVISION]

MISC. APPLICATION NO. 469 OF 2023

[ARISING FROM CIVIL SUIT NO. 271 OF 2023]

TWETISE ALEX ===== APPLICANT

VERSUS

1. LYU CHENWEI 2. LUI YONGSHUN ===== RESPONDENTS

BEFORE HON: JUSTICE EMMANUEL BAGUMA

RULING

This application is by chamber summons under section 64 and 98 of the CPA and order 40 rule 1, 2, 4 and 12 of the CPR seeking for orders that; -

- 1. A warrant of arrest issues against the Respondents and bring them before the court to show cause why they should not furnish security for their appearance.

- 2. That alternatively, the Respondents be ordered to deposit in court the sum of USD 80,000/ = [United States Dollars Eighty Thousand or its equivalent of 288, 000,000/= Uganda shillings Two Hundred Eighty Eight million only] being money sufficient to answer the claim in the main suit or to furnish security for their appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against the Respondents/Defendants.
- 3. Costs of this application be provided for.

The application is supported by the affidavit of Twetise Alex the applicant whose details are on record but briefly states that; -

1. I instituted a suit against the Respondents vide Civil Suit No. 271 of 2023 seeking a declaration that the Respondents are liable for the tort of deceit and fraudulent misrepresentation, an order for payment of USD 80,000/=

[United States Dollars Eighty Thousand or its equivalent of 288, 000,000/= Uganda shillings Two Hundred Eighty Eight million only] general damages, punitive and exemplary damages, interest and costs of the suit.

- 2. I also made a police complaint vide CRB 535 of 2023 and after investigations the police has since preferred charges of theft against the Respondents who are awaiting criminal trial.
- 3. I am reliably informed by my lawyers that the main suit has a high likelihood of success for reason that the Respondents have no plausible defence to it.
- 4. I am apprehensive that the Respondents are about to abscond or leave the local limits of the jurisdiction of this court before hearing and determination of the main suit for reasons that the Respondents could attempt to escape out of the country since they are non- citizens and are in possession of their passports.
- 5. The Respondents are of Chinese origin with no permanent residence or known assets within the jurisdiction of this court who at anytime have indicated abscondment from the ambit of the power of this court.
- 6. The application is intended to give a fair balance to both parties and give an assurance to the applicant that his decree, if made, would be satisfied rather than becoming redundant on account of the fact that the Respondents are not indigenous persons with assets within this court's jurisdiction.

In reply, the Respondents opposed the application and in an affidavit sworn by **Liu Yongshun** the 2nd Respondent whose details are on record but briefly stated that; -

- 1. I was maliciously charged on the grounds that the plaintiff's employer Mr. Fan Shuchun had given the driver monies to deliver to a destination and means not disclosed in the application.

- 2. During the entire investigation, I was granted Police Bond and I reported to police for the entire 3 months when the matter was taken to court.
- 3. The Chief Magistrate court Nakawa granted me bail of cash 10,000,000/= (ten million) and I together with the sureties deposited our travel documents i.e. passport No. E64792055 which is duly held by the Chief Magistrate Nakawa Magistrates Court.
- 4. I have honored all the days of the trial and the case has not been heard because it is still pending investigations otherwise I am ready to defend myself.
- 5. The applicant properly delivered the money and he has no claim against me since the money was received by the right recipient.
- 6. The applicant is a simple driver who is in collusion with Mr. Fan to cheat me of my hard earned money.
- 7. I have been informed by my lawyer whose advice I verily believe to be true that the applicant's main suit has no likelihood of success for the reason that the applicant has no cause of action against me and the suit is frivolous and vexatious.
- 8. I have a known place of business premises known by the applicant at Global House Nakawa in Kampala District where I work and I have no plans of stopping to work from there.
- 9. I have no plans or intentions to delay or avoid any court process or obstruct or delay the execution of any decree that could be passed against me.

In rejoinder, the applicant stated that it is not true that the Respondents have attended court since the 1st Respondent was granted bail but refused to attend court as required and court issued a Criminal Summons against him. The 2nd Respondent has never appeared before court to take plea and court has since issued a warrant of arrest against him.

The Respondents admit receiving the funds from me but the police report shows that the same were never transferred to Mr. FAN in South Sudan as required and hence the applicant has a cause of action against the Respondents.

Representation.

Counsel Brian Kirima represented the applicant while counsel Mutakirwa Edward Represented the Respondents.

At hearing, parties agreed to file written submissions.

Submissions by counsel for the applicant.

Counsel raised one issue for court's determination to wit; -

Whether the application should be granted?

Counsel referred to section 64 of the CPA which grants this court power to issue a warrant to arrest the defendant and bring him or her before court to show cause why he or she should not give security for appearance.

Counsel also referred to order 40 rule 1 of the CPR which allows court to issue a warrant against a defendant where it is established that the defendant is likely to delay or frustrate execution of a decree that may be issued by court.

Counsel referred to the case of **Uganda electricity Board (in liquidation) Vs Roayl Van Zanteen (U) limited Misc. Application No. 251 of 2006** where court noted that; -

"Intention is an internal fact. Direct evidence can hardly be expected. The question of intent alleged by the plaintiff has to be determined having regard to the particular facts and circumstances of each case".*

Counsel referred to the case **Pyarali Datardini –Vs- Anglo American Amusement Park IV ULR 28** quoted in the case of **Uganda Electricity Board Case supra** where court stated that; -

" intent to obstruct or delay execution is not a key ingredient to be proved to the satisfaction of Court by a party proceeding under this rule, that it was enough if his going away would have that effect".*

Counsel submitted that the applicant is apprehensive that the Respondents will leave the jurisdiction of this court and go back to their Chinese origin yet they have no assets and fixed place of abode in Uganda. The 1st Respondent was granted bail but he jumped the same and court issued criminal summons yet the 2nd respondent has never attended court in the criminal case and he is on warrant of arrest which conduct indicates a real and imminent risk that the Respondents may abscond or leave the local limits of the jurisdiction of this court.

Counsel submitted that the potential obscondment of the Respondents from this court's jurisdiction poses a significant threat to the execution of any decree that may be passed in the main suit. The absence of the Respondents would hinder the effective enforcement of any judgment or order in favour of the Applicant. This in turn would jeopardize the Applicant's ability to secure the rightful remedies and relief sought in the main suit.

Submissions by Counsel for the Respondents.

Counsel for the Respondents referred to section 64 of the Civil Procedure Act and order 40 rule 1 of the CPR which provide for attachment before judgment.

He referred to the case of **Abby Mugimu Vs Basabosa HCCS NO. 922 OF 1990** where court while considering the matter where the defendant was a none national, it held that;-

"Before the court could exercise its discretionary powers under Order 36 rule 5 by ordering attachment of property before judgment or furnishing security, there had to be real evidence that the defendant was to leave the country or to sell the property and obstruct or delay justice".

Counsel submitted that in the instant case the 2 nd Respondent/2 nd Defendant clearly deposes in his evidence that he was maliciously charged, granted police bond during the entire investigation and kept reporting to police until he was arraigned in court and the Chief Magistrate granted him bail of 10,000,000/= (ten million) and together with his sureties deposited their travel document i.e. passport No. E64792055 which is duly held by Nakawa Chief Magistrate court pending the trial.

Counsel submitted that the respondent has honoured all the days of the trial and the case hasn't been initiated. He is ready to defend himself against that frivolous case and the respondents have never conducted themselves in a way that shows that they are about to leave Uganda.

In rejoinder counsel for the applicant reiterated his submissions in chief but added that since the 1 st Respondent has not filed an affidavit in reply leaving the evidence of this applicant unchallenged. He referred to the case of **Makerere University Vs St Mark Education Institute Ltd & ors [1994] KALR 681**.

Determination of court.

Section 64(a) of the Civil Procedure Act is to the effect that; -

"In order to prevent the ends of justice from being defeated, the court may direct the defendant to furnish security to produce any property belonging to him or her and to place the same at the disposal of the court or order the attachment of any property".

Halsbury's Laws of England 4th Ed, Vol. 37 states that; -

The purpose of an interlocutory application for attachment before judgment is to

enable the court to grant such relief to preserve a fair balance between the parties and give them due protection while awaiting the final outcome of the proceedings.

The main object of the provisions of the law on attachment before judgment and provision of security is to prevent any attempt on the part of the defendant to evade justice and avoid the decree that may be passed against him or her. It is a sort of a guarantee against a decree becoming infructuous for want of property available from which the plaintiff can satisfy the decree.

Order 40 rules 1 & 2 of the CPR provides as follows:-

1. *Where defendant may be called upon to furnish security for appearance. (1) Where at any stage of a suit, other than a suit of the nature referred to in section 12(a) to (d) of the Act, the court is satisfied by affidavit or otherwise—*

a) that the defendant with intent to delay the plaintiff, or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him or her—

i. has absconded or left the local limits of the jurisdiction of the court; ii. is about to abscond or leave the local limits of the jurisdiction of the court; or

iii. has disposed of or removed from the local limits of the jurisdiction of the court his or her property or any part of it; or

b) that the defendant is about to leave Uganda in circumstances affording a reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security for his or her appearance.

2. Security.

Where the defendant fails to show such cause, the court shall order him or her either to deposit in court money or other property sufficient to answer the claim against him or her, or to furnish security for his or her appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him or her in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under rule 1(2) of this Order.

Basing on the above provisions of the law, the defendant may be called upon to furnish security where the court is satisfied that the defendant has intention to obstruct or delay the execution of the decree by selling his property or removing it from the jurisdiction of the Court, or himself moving out of the court's jurisdiction.

In the instant case, the applicant deponed that he is apprehensive that the Respondents being Chinese without assets in Uganda are likely to escape and leave the jurisdiction of this court and go back to China which will frustrate execution of the decree which may be issued by this court. In the submissions in rejoinder counsel for the applicant stated that the 1st Respondent did not file an affidavit in reply leaving the evidence of the applicant in support of the application unchallenged.

On the contrary, the 2nd Respondent denied having intentions to leave Uganda and stated that they have complied in the criminal court and attended court at all instances. He further added that his passport No. E64792055 together with that of his sureties were retained by court in the Chief Magistrate Court at Nakawa and hence he cannot move outside Uganda. This evidence is not rebutted by the Applicant instead it is corroborated by the applicant when he stated that there is a pending criminal case at Nakawa Chief Magistrates Court.

This evidence shows that the Respondents movements are already restrained in the criminal matters and hence there is no need to issue the order sought since the Respondents cannot move outside Uganda which would cause a frustration in the hearing and orders of the main suit.

In response to the 1st Respondent failure to failure to file a reply, I have perused the court record and found that there is no proof of service of this application on the 1st Respondent. He cannot there be faulted for not respondent to case which was never served on him.

It is my considered view that basing on the facts and circumstances of this case, this court does not have to exercise its power under section 64 of the CPA and order 40 rule 1, 2, 4 and 12 of the CPR to issue an order requiring the Respondents to furnish security of their appearance in court.

In the final result, the applicant did not furnish this with real evidence to show that the Respondents were about to leave the country or obstruct the course of justice in CS No. 271 of 2023.

Conclusion

This application is dismissed with the following orders; -

- 1. The application is hereby dismissed.
- 2. Let the main suit be first trucked.
- 3. Considering the circumstances of this case, no order as to costs.

Dated, signed, sealed and delivered by email on this **11th** day of **March 2024**.

Emmanuel Baguma Judge.

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/ughccd/2024/72/eng@2024-03-11>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/twetise-v-lyu-miscellaneous-application-469-of-2023-2024-ughccd-72-11-march-2024-and-others-unknown-topic-unknown-court-2024>

Prepared on 14 October 2026 · Esheria