THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT KAMPALA.

CIVIL SUIT NO. 1230 OF 1988.

AGARD DIDI::PLAINTIFF.

VERSUS

JAMES NAMAKAJO:::DEFENDANT

Before; The Honourable Mr. Justice G.M. Okello.

RULING.

In this application the applicant seeks an order of this Court to stay the execution of the exparte Decree passed by this court against the applicant on 3/7/89. The application was brought by chamber summons under Order 19 rr 23(1) and 89 of the Civil Procedure Rules and section 101 of the Civil Procedure Act. It was supported by an affidavit which was sworn on 22/1/90 by the applicant.

The grounds on which the application is based are contained in the supporting affidavit. The summary of these grounds are that the failure of the applicant to enter the necessary appearance was caused by an advocate who was instructed by the applicant. That the advocate failed to carry out the applicant's instruction to enter the necessary appearance and to file the defence on behalf of the applicant. That the applicant has good defences to the suit and that he had all along been willing and ready to defend the suit. That a warrant of Attachment and sale of Applicant's Motor vehicle No. UPF 658 has already been issued to one Eddie Semujju Court Bailiff. That unless the execution of the decree is stayed the applicant shall suffer great less since his said motor vehicle shall be sold. Relying on the above grounds Mr. Jombwe for the applicant prayed that the

application be allowed to enable him prosecute the pending application to set aside the exparte judgment.

For the plaintiff/respondent Mr. Donge opposed the application. He argued that the supporting affidavit worn by the applicant is tainted with falsities and lies, He relied on an affidavit in reply sworn by himself on 8/3/90 as counsel duly instructed to handle this case. Counsel pointed out that it is not true that there is a pending execution against the applicant's motor Vehicle UPF 658 because it was discovered that the Motor vehicle does not belong to the applicant so the court broker returned the warrant under his letter ref. FAA/222/90 of 7/2/90. Counsel further argued that it is not also true that the failure of the applicant to enter appearance in this case within the prescribed period was caused by the failure of a firm of Advocates instructed by the applicant to carry out the instruction because the applicant always acted in person until now when he found that he was in trouble. That, even the dismissed application to set aside the exparte judgment not filed by M/S 0kumu & Co. Advocates as claimed by the applicant because the application was filed by the applicant himself and did not pay the necessary fee. Counsel reminded court that, that application, is on the record. Mr. Donge further submitted that the applicant cannot seek the indulges of this court when at the same time he does not honour it. He pointed out that when court's warrant for execution was issued on 3/4/90 for the attachment and Sale of the applicant's house hold properties and also for the return o the plaintiff's title deed, the applicant obstructed the execution by following the. Court Bailiff, intimidating him, and even physically assaulting the court Bailiff
Bailiff in the course of which he forcefully removed from the Court bailiff the properties attached. He prayed that the application be dismissed with cost.

In a brief reply Mr. Jombwe submitted that the fact that warrant of attachment of the applicants Motor vehicle No. UPF 658 was returned is no prejudice to the applicant's application because a fresh warrant can still be issued as in fact it was already done on 3/4/90. He denied that the affidavit of the applicant was tainted with lies. He pointed out that paragraph 10 of the affidavit shows that the applicant had instructed M/S Okumu & Co. Advocates. That this was the advocates the applicant referred to in paragraph 3 of his affidavit.

On the alleged obstruction, Mr. Jombwe denied that there was obstruction because applicant only explained to the Court Bailiff that the properties attached by order of that warrant issued on 3/4/90 were not the properties of the app1icant, that they belonged to the wife of the applicant. He reiterated his prayer that the application to stay execution be allowed.

I have carefully considered the above arguments and had a reflection on the relevant law. Before I start discussing the merits or demerits of the application as was elicited in the arguments, I have one or two observations to make.

First this application is made under 0.19 rr 23(1) 89 of the Civil Procedure Rules and Section 101 of the Civil Procedure Act.

O,19 r 23(1) of the Civil Procedure Rules reads as follows:—

> *"The Court to which a decree has been sent for execution shall upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the Judgment debtor to apply to the court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution or for any other order relating to the decree or execution which might have been made by the Court of first instance, or appellate Court if execution has been issued thereby or if application for execution has been made thereto."*

It is clear from the above passage that the rule applies to a Court to which a decree has been sent for execution. It does not apply to a Court which has passed the decree.

In the instant case, the application for stay of execution is not before a Court to which be decree was sent for execution. It is before the Court by which the decree was passed. The above rule therefore is not applicable.

The intention of the applicant is of course quite clear in his applications. He seeks a stay of the execution of the exparte Decree which was passed by this Court against him in favour of the Respondent.

The second observation, I wish to make is that inherent jurisdiction under section 101 of the Civil Procedure Act may be invoked, to order a stay of execution. This is where there is no other remedy provided under another provision of the law (See: Singh .vs. Runda Coffee Estates Ltd (1966) EA 263).

In the instant case, .Mr. Jombwe argued, that this application should be allowed to enable the applicant to prosecute the pending application to set aside the exparte judgment. There is no dispute from the respondent that there is a pending application, by the applicant against the respondent in, this court to set aside the exparte judgment. That being thee position, there is another provision of the Civil Procedure Rules which applies to this situation. It means that the inherent jurisdiction under section 101 of the Civil Procedure Act would not be called to aid in the case because there is a remedy under another provision of the law.

Civil Procedure Rules are primarily meant to be obeyed. In the instant case, the Rule cited is not applicable to the facts of the case, Section 101 of the Civil Procedure Act is also not applicable because of the reason given. Under those circumstances the application having been brought under the wrong rule cannot be allowed to stand. It must be dismissed on this technical ground. For that reason, I see that no useful purpose will be served by my considering the merits or demerits 6f the application. It is a waste of time.

Application is therefore dismissed with costs.

.....G.M.O

kello Judge

14/5/90