

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 837 OF 1995

Shell Bugolobi Limited :::::::::::::::::::: Plaintiff

Versus

Bugolobi Properties Limited :::: : : : ::::::::::: Defendant

BEFORE: The Hon. the Principal Judge - Justice J.H. Ntabgoba

RULING:

In this case the applicant, Tarlochan Singh Nhajan has, by Chamber summons, applied for an order to stay execution of a consent judgment entered by the two respondents in H.C.C.S. NO. 837 of 1995. He alleges that on 14/12/93 he paid for 33% of the shares in the second respondent company, Bugolobi Properties, Ltd. He thereby became a shareholder and a Director in the company. He alleges that on 7/7/94 a meeting of the second respondent company, in his absence, purported to dismiss him from the company after it purported that he had forfeited his shares therein on the ground that he had failed to pay US\$ 100,000.00. He says that thereafter the second respondent company purported to have borrowed some money from the first respondent company. The two companies he says, concocted a Civil Suit (H.C.C.S. No. 837/95) between them and that they then entered a consent judgment by which the chief Registrar of Titles was ordered to transfer the title of the second respondent to the first respondent.

The applicant argues that as a shareholder in the second respondent. transfer of the land of the second respondent to the first respondent robs him of his interest in the land. He has filed another suit, namely H.C.C.S. NO.134 of 1996 in which he seeks an order to set aside the consent judgment in H.C.C.S. No 837/95, and to also set aside the decree therein as well as the vesting order. He argues that if the execution in H.C.C.S. NO. 837/95 is not stayed until the final determination of H.C.C.S. NO. 134/95, that suit will be made nugatory and he will suffer irreparable damage and loss.

Clearly, it can be seen that the applicant was not party to H.C.C.S. No. 837/95 or to the consent judgment. Mr. Byenkya, learned Counsel for the respondents raised an objection in which he argues that the applicant has no locus standi to bring the application since he was not party to the suit the execution whereof is to be stayed if the application were to succeed.

In the first place, Mr. Babigumira learned Counsel for the applicant, had filed his application pursuant to Order 19 rule 26 of the C.P.Rs and S.101 of the C.P.A. He sought to amend the application by deleting Order 19 rule 26 of the C.P.Rs because, according to him, and Mr. Byenkya appears not to differ, that rule applies where the applicant was party to the suit whose execution is being sought to be stayed. The rule provide that: “Where *a suit is pending in any Court against the holder of a decree of such Court in the name of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the Decree until the pending Suit has been decided.*”

I do agree that since the applicant, in the instant application, is not the person against whom the decree in H.C.C.S. NO. 837/95 was passed, he cannot proceed under Order 19 rule 26 of the C.P.Rs. Mr. Byenkya further thinks that even S.101 of the C.P.A. would not apply since the applicant was not party to the suit (i.e. H.C.C.S No. 837/95). He says that the Supreme Court, in Lawrence Musitwa Kyazze - vs. Eunice Businge, Civil Application No. 18/90 laid down three steps the court should follow when using its inherent jurisdiction to set execution. I have read the decision in that case at page 9 of the judgment. The Court was resolving “the ambiguity in favour of the express powers in the Supreme Court, without a mandatory limitation upon those powers as expressed by Rule 41. The Court then had this to say, which, I think is the relevant portion of its judgment, as far as our present arguments are concerned:

” The practice that this Court should adopt, is that in general application for a stay should be made informally to the judge who decided the case when judgment is delivered. The judge may direct that a formal motion be presented on notice (Order XLVIII rule 1), after notice of appeal has been filed. He may in the meantime grant a temporary stay for this to be done. The parties asking for a stay should be prepared to meet the conditions set out in Order XXXIX Rule 4(3) of the Civil Procedure Rules. The temporary application may be ex parte. If the

application is refused, the parties may then apply to the Supreme Court under Rule 5(2) (b) of the Court of Appeal Rules where again they should be prepared to meet conditions similar to those set out in Order XXXIX Rule 4(3). However, there may be circumstances when this Court will intervene to preserve the status quo.” The above cited words of the Supreme Court are nothing more than a statement of procedure to be adopted by this Court, failure of which the Supreme Court, in which an appeal is pending, steps in to play the role that this Court would have otherwise played. But the procedure is followed where a party aggrieved in this Court wishes this Court to stay execution of its judgment and decree pending an appeal to the Supreme Court. Those words, if read carefully, emphasize the importance of doing justice - the concept of the provisions of S.3(2) (c) of the Judicature Act, 1967 (which has been retained verbatim by the new Judicature Statute 1996, and which provides that:

“Where no express law or rule is applicable to any matter in issue before the High Court subject to the provisions of the constitution and of this (statute), the jurisdiction of the High Court shall be exercised in conformity with the principles of equity and good conscience.”

This provision is very important in that it empowers the High Court to use its discretion by applying procedures which it may deem necessary for the ends of justice to be met. These powers are broadened by the provision of the constitution in Article 126(2) (e) that:

In adjudicating cases of both a Civil and Criminal nature, the Courts shall, subject to the law, apply the following principles: -

(a).... (d)

(e) Substantive justice shall be administered without due regard to technicalities.”

I should also refer to the words of Wambuzi, President of the Court of Appeal (as he then was) in the case of Mugenyi & Co. Advocates - vs - National Insurance Corporation (unreported, Civil Appeal No. 13/1984 that:

I think it is well established that the High Court has inherent jurisdiction to stay any of its orders, see Joanita Kagwa - vs - Olive Amelia Kawalya Kagwa (Administration Cause No. 21 of 1972 (1972) ULR 129; Ujagar Singh - vs - Runda Coffee Estates Ltd (1966] E.A.263).”

What all this boils down to is that this court cannot sit helplessly where no specific provision is provided in the law for a procedure to be followed. This Court will always be guided by the principles of equity, justice and good conscience to provide itself with a procedure for the ends of justice to be achieved.

In this case, although the applicant was not party to the consent judgment and decree, which he seeks to be stayed, if he can show that such consent judgment and decree had the effect of prejudicing his rights and interests, he is free to invoke the wide inherent powers of this Court to come to his aid. He has shown that his 33% of the shares in the second respondent company are to be lost if the company is sold or transferred to the first respondent company. He has alleged that he was ousted from the second respondent company by fraudulent allegations. He says that in fact H.C.C.S. No. 837/95 was concocted so as to defeat his interest in the second respondent company. He has made other allegations. Those allegations may be found to be true or false. What is important in this application, however, is that he should be given an opportunity to prove the allegations. He should not be denied such opportunity. It would be inequitable to deny it to him. This is a proper case in which this Court should apply its inherent jurisdiction to allow him put in an application under S.101 of the Civil Procedure Act. Accordingly I allow his oral application and a date will be fixed for hearing his substantive application, namely, for stay of execution in H.C.C.S\ No. 837/95, including restraining the Chief Registrar of Titles from registering the transfer of any piece of land from the second respondent to the first respondent company. Order accordingly.

J.H. NTABGOBA

PRINCIPAL JUDGE.

16/7/96