

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, AT KAMPALA
CIVIL SUIT NO.1136 OF 1999

PETER MULIRA

(t/a) Peter Mulira & Co.

Advocates).....

..... PLAINTIFF

VERSUS

CROWN BOTTLERS

LTD:.....

..... DEFENDANT.

JUDGEMENT.

INTRODUCTION.

This is a statutory suit. It was instituted by the Plaintiff under the provisions of Order 19 rule 60 of the Civil Procedure Rules.

Through this suit, the Plaintiff seeks to establish his claim for the attachment of the properties comprising Kyaddondo, block 244, plots 480, 1274, and 1295. For that purpose, the Plaintiff seeks the following orders: —

- a) An order declaring Kyaddondo block 244, plots 480, 1274 and 1275, liable to attachment in satisfaction of the decretal sum in HCSC No 608 of 1997,
- b) An order restoring the attachment of the suit properties.
- c) An order directing the defendant to surrender possession of the suit properties to an appointed bailiff, and
- d) An order granting the costs of this suit to the plaintiff.

BACKGROUND AND FACTS.

This suit has a long and circuitous background. However, the circumstances giving rise to this statutory suit appear to me to be invaluablely helpful for a deeper understanding of the nature of the dispute between the parties and for the just disposal of the entire suit. Those circumstances are, in brief, as set out below.

The three suit properties were, for some years prior to the institution of this case and still are presently, registered in the names of Lake Victoria Bottling Company (LVBC).

LVBC was, for several years, a company dealing in the business of bottling soft drinks in Uganda. In 1975, under the provisions of section 1, of the Properties And Businesses (Acquisition) Decree (Decree No 11 of 1975), together with other companies and businesses, it was acquired by the Government of Uganda.

LVBC was, from that time onwards, operated as a company entirely owned by the government of Uganda. In 1982, upon the coming into force of the Expropriated Properties Act, 1982, LVBC was reaffirmed as vesting in the government of Uganda. Like all other properties which were

affected by law, LVBC was to be managed by the Ministry of Finance.

On 12th December, 1992, two persons, namely the late Paul Kibuka musoke and Norman Searle, sitting in Nairobi, and claiming to duly constitute the Board of Directors of LVBC, appointed the plaintiff as company lawyers and secretaries. The Plaintiff received instructions to pursue both court processes and other legal means to secure the repossession of LVBC's properties in Uganda by the former shareholders.

It is not in dispute that the plaintiff did carry out those instructions vigorously and diligently. However, the Plaintiff failed to secure repossession of LVBC by it's the former shareholders. The government of Uganda preferred the option of selling off LVBC to a group of new investors to issuing a repossession certificate to its former shareholders.

The government of Uganda sold LVBC on 12th February, 1993. The new investors incorporated the defendant company (Crown Bottlers Ltd) to operate the business of bottling soft drinks. The three suit properties, namely, Kyaddondo block 244, plots 480, 1274 and 1775, were listed in the schedule to agreement of sale as part of the assets LVBC sold to the defendant.

Following the failure by the former shareholders of LVBC to obtain repossession under the Expropriated Properties Act, 1982, they opted to seek compensation from the government of Uganda. After a protracted negotiation process, during which the plaintiff was representing the former shareholders of LVBC, the government of Uganda agreed to pay compensation amounting to UGS 5,799,767,000/= to the former shareholders of LVBC in respect of, shares, property and business including good will, of LVBC. The government of Uganda subsequently paid the entire sum to the former shareholders.

The plaintiff then presented his bill for professional fees in the sum of UGS 270,000,000/= to LVBC, or, more specifically, Mr. Norman Searle and the late Mr. Paul Kibuka musoke, the former shareholders and directors of LVBC.

The plaintiff appears to have obtained only partial payment of his bill for professional fees from the former shareholders. He was paid UGS 91,752,137/=. That left the plaintiff with an unpaid claim for Shs. 189,000,000/=. After failing to recover the unpaid claim, the plaintiff filed Civil Suit No 608 of 1997, claiming from LVBC and Mr. Norman Searly jointly and severally, UGS 189,000,000/=. The plaintiff contended, in that suit, that he had retained a lien in the compensation money which the government of Uganda had, through the Privatization Unit of the Divestiture and Reform Implementation Committee, had paid as compensation to the former shareholders of LVBC.

The Plaintiff obtained from this court, a decree for the unpaid balance of Shs. 189,000,000/= plus his costs which lifted the decretal sum upwards to UGS 192,381,500/=.

It was during the process of the execution of the decree which is mentioned above that the Plaintiff attached the three suit properties involved in this statutory case.

Following the attachment of the three suit properties, Crown Bottlers Ltd, the defendant to this suit, instituted Objector proceedings under Order 19 rule 55 of the Civil Procedure Rules. By order made by this court on 17th October, 1997, per Arach Amoko, Ag Judge, as she then was, the three suit properties were released from attachment on the ground that the objector (Crown Bottlers Ltd) was in possession. Hence this statutory suit under Order 19 rule 60, of the Civil Procedure Rules, through which the Plaintiff seeks to establish his claim for the attachment of the three properties.

THE RESPECTIVE CASES.

The summary of the plaintiff's case is that the properties in question are attachable by him to satisfy the decretal balance of his professional fees because LVC remains on the register of companies and the three suit properties remain registered in the name of LVBC. The Plaintiff avers that the sale of the shares and properties of LVBC by the government was invalid in that it was effected by the ministry of Commerce Industry and Co-operatives which had neither legal nor equitable interest in the properties. That sale, the plaintiff contends, did not pass any good

title to the defendants. The ministry of Commerce did not have any specified powers to effect the sale on behalf of the Government of Uganda.

The defendant's case, on the other side, is that the plaintiff's legitimate claim lay, not in the attachment of the three suit properties, in which LVBC had no right or interest, but rather in the compensation money which was given to the trustees of the former shareholders of LVBC by the government.

The defendant also averred that the mere presence of LVBC on the register of companies, after the sale of its shares, properties and business, did not give LVBC any capacity to hold the suit properties because LVBC remained a mere shell without any shares, shareholders or directors, after the sale. It was the defendant's case that both Mrs. Norman Searle and the late Paul Kibuka musoke were not directors of LVBC when they gave instructions to the plaintiff on 12th December, 1992. Thus, even without the sale of the shares and properties of LVBC, the company would not have been liable to pay the Plaintiff's bill of professional fees.

ISSUES:

A total of eight issues were agreed upon for determination. They are:

- 1) Whether the plaintiff has a locus standi to bring this suit.
- 2) Whether the Plaintiff ought to have filed an appeal against the ruling of this court dated 17th October 1997 instead of this suit.
- 3) Whether the plaintiff's suit is maintainable against the defendant in light of the agreement dated 17th October, 1996 (Annexure A to the Defence)

- 4) Whether the suit properties comprised in block 244 plots are liable to attachment in execution of the decree in HCCS No. 608 of 1997, pursuant to an order of attachment issued by the Deputy Registrar of the High Court on 5th day of September, 1997;
- 5) Whether the agreement of sale dated February, 1993 was capable of vesting the suit properties in the defendant;
- 6) Whether LVBC ceased to exist as alleged in paragraph 5(e) of the defence.
- 7) Whether it was a legal requirement for the minister of Finance to issue a statutory order before the sale of the properties of LVBC could be effected.
- 8) Whether the plaintiff is entitled to the orders which he seeks in the plaint.

I am quite aware of the fact that it is the duty of the court and the advocates involved in a given suit to ensure that issues are framed. Odd Jobs vs. Mubia (1970) E.A 476. The court may, at any time before passing the decree, amend the issues or frame additional issues as may be necessary for the determination of all matters in controversy between the parties. Order 13 rule 5(1), of the Civil Procedure Rules.

After listening to the evidence, a number of the issues set out above, appear to me to have become unnecessary for the determination of the controversy between the parties in this case. I have, however, chosen not to amend or reframe the issues. I will deal with only those few issues which in my view fully dispose of the dispute involved in this case.

ANALYSIS:

In his final submissions, learned counsel Mr. Tumusinguze, for the defendant, conceded to issue

number one. This court has examined the number one very closely. It finds no problem with the Plaintiff instituting and maintaining this suit which is a statutory one under Order 19 rule 60 of the Civil Procedure Rules. The rule does not provide for an appeal against an order releasing any property from attachment. It provides for the institution of a suit which is clearly the procedure which the plaintiff in this case resorted to.

I will straight away move to issue number four. That particular issue in my view, constitutes the very heart and soul of the dispute upon which this entire suit relates. Its disposal one way or the other clearly disposes of all the other issues directly or indirectly.

Issue number four, as it appears on the court record is , whether the suit properties comprising Kyaddondo, Block 244, plots 480, 1274 and 1275, are liable to attachment in execution of the decree in HCCS No. 608 of 1997.

Both Mr. Peter Mulira and Mr. Bernard Tumusinguze, made extensive submissions on this particular issue.

On his part, Mr. Mulira, in his written submissions, treated this issue as issue number seven.

Mr. Tumusinguze maintained the issue, in his written submissions as issue number four. However, Mr. Tumusinguze treated issue number four jointly with issue number five. Issue number five was treated by Mr. Mulira as issue number four. On account of that reason I will analyse the two issues jointly.

Mr. Mulira's submissions on both issues was that LVBC as a company was distinct from its members and it was capable of holding property in its own name. He argued that since the evidence on record showed that LVBC was still on the register of companies and the suit properties were still registered in the name of LVBC, the suit properties were, for those reasons

liable to attachment in execution of the decree in HCCS 608 of 1997, which was issued against LVBC as a judgment debtor.

Mr. Mulira cited the provisions of section 56 of the Registration of Titles Act, which provides that a certificate of title is conclusive evidence that the person named in the certificate is proprietor of the property to which the certificate relates. Mr. Mulira concluded that in his view, the law left no room for argument as to who was the proprietor of the suit properties. The proprietor was clearly LVBC and since LVBC had not satisfied the decree in HCCS No. 608 of 1997, its properties are liable to attachment in the execution of that decree.

On the question of whether the agreement of sale dated 12th February, 1993, was capable of vesting the suit properties in the defendant. Mr. Mulira made several arguments why the agreement was incapable of vesting the suit properties in the defendant.

First, he argued that the agreement of sale was not an instrument capable of transferring or vesting an interest within the meaning of the Registration of Titles Act.

Second Mr. Mulira cited the Australian Torrens system under which registration is everything and submitted that the defendant was not vested with the rights in rem but was a mere equitable owner after the purchase of LVBC.

Mr. Mulira relying upon the principle cited by lord Cattenham in Tasker Vs Small (1834) 3 M & C.70 and applied by this court John Katwiremu Vs. William Katarikawe & Others (1977) HCB 187, submitted that before a purchaser registers his or her property he or she enjoys a mere equitable interest which cannot affect the rights of others. An equitable right is merely a right in personam which, unlike a registered interest which is a legal interest or a right in rem, is enforceable only against the vendor and not against the whole world. Upon these arguments Mr. Mulira finally submitted that the agreement of sale dated 13th February, 1993, could not vest legal instrument in the defendant because it was not an interest capable of transferring any

property.

Mr. Tumusinguze opposed the above submissions and argued that the defendant's title though equitable in as far as the suit properties are concerned, was superior to the one claimed by the plaintiff. The interest of the defendant might be in personam but such interest was good as against parties like the plaintiff who had knowledge of the same.

I have examined all those arguments raised by the two learned counsel, It appears to me that this case can easily be solved not by arguments relating to the ordinary law of conveyancing or company law, but by a mere careful examination and interpretation of the relevant provisions of the Properties And Business (Acquisition) Decree, 1975 and The Expropriated Properties Act, 1982.

Since what is investigated in a statutory suit instituted under Order 19 rule 60, is title, see W. Patel V. Chaturbhai M. Patel And Another (1958) E.A 743 (specifically at P.744), the question this court has to answer is, where did the titles in the suit properties vest before and after the sale by the Government of the business and properties of LVBC. If the titles vested and continue to vest in LVBC, then the suit properties, to that extent, are attachable. However, after a careful examination of the relevant law and the evidence produced before me in this case, I strongly find that the three suit properties are not attachable.

There are several legal reasons why I have come to that conclusion. I will give only two of those legal reasons.

The first reason is rooted in the provisions of the two pieces of legislation which regulated both the acquisition and the sale of LVBC. Those are, the Properties and Businesses (Acquisitions) Decree, 1975 and The Expropriated Properties Act, 1982.

Sub sections (1) and (2) of section 1, of the Properties And Businesses (Acquisition Decree, 1975, Decree 1 of 1975, provided as below:

1. (1) All the properties and Businesses specified in the Schedule to this Decree and any interest or right appertaining to such property or business shall, by virtue of this Decree and without further assurance, vest in the Government, and shall be deemed to have been vested and acquired by the Government as from the 1 8th day of December, 1 972.
(2) The Government shall pay compensation in respect of any property or business, interest or right, acquired under this section, to the Government of the former owner of the property or business, in accordance with the provisions of this Decree. (Emphasis Added).

(3).....”

Paragraph (b) of subsection (1) of Section 1, of the Expropriated Properties Act, 1 962, (Act 9 of 1 982), reads as follows:

“1 (1) Any Property or business which was,

(a)

.....
.....

b) acquired by the Government under the Properties and Businesses (Acquisition) Decree, 1975.

c)

shall, from the commencement of this Act, remain vested in the Government and be managed by the Ministry of finance.” Emphasis Added.)

Subsection (1) of section 2 of the same Act, provides as below:

2 (1) Subject to the provisions of this Act, the Minister shall have power to transfer to the former owner of any property or business vested in the Government under this Act, such properties and businesses.'

Subsection (1) of section 5 of Act 9 of 1982 makes provision vesting power in the Minister of Finance, "to issue a certificate authorising the former owner to repossess such property or business."

Under paragraphs (a) and (C) of section 6 of Act 9 of 1982, a certificate of repossession acts as sufficient authority for the Chief Registrar of Titles (Commissioner land Registration) to transfer title to the former owner" and "to the Registrar of Companies to reinstate on the Register, a company that had been struck off."

When those various provisions of the law are read together, it becomes quite clear that in 1975, the Government of Uganda acquired a company by the name of LVBC, as a business belonging to the then its shareholders. In addition, the Government acquired any interest or right pertaining to that company. Thus it appears to me that any right to ownership of property or the interest of the company in the suit properties was by virtue of that provision of the law vested in the Government. It also appear to me that the acquisition and vesting was not restricted to existing business, interest or right but to all business, interest and right that pertained or continued to pertain to the company during the period before the company was finally sold by the Government.

Thus, in my humble view, in as far as registrable interest in law was concerned, subsection (1) of section 1 of The Properties And Business (Acquisition) Decree 1975, was a vesting legislation. The provision itself was worded in such a way that it clearly excluded need for further assurances for the purposes of the completion of the vesting of the properties, business and any interests or rights that were acquired by the Government under Decree No.11 of 1975. That, inevitably, excluded the need for registering the title deeds in the names of the Government in the case of real property in which the business acquired had an interest. It is important to note that in the case of interest in land which was already registered in the

name of the business acquired, subsection (2) (b) of section 4 of Decree 11 of 1975, required, LVBC to surrender any title deeds as part of the declaration that was required to be made by LVBC subsection (1) of section 4 of that Decree.

Accordingly, the argument raised by Mr. Mulira that the suit properties are still registered in the name of LVBC, is obviously of no helpful consequences to his case. The registered interest was sucked out by section 1 subsection (1) of Decree 11 of 1975. By the coming into force of Decree 11 of 1975, the Government became the owner of a legal estate statutory vested in it by that Decree. The Government became the statutory owner. The law itself ruled out any further assurance than the law. The Government, therefore, did not require a vesting deed to be made in its favour.

The certificates of title in the names of LVBC were left valueless and represent no actual interest in the suit property. They were deflated by the provisions of sub section (1) of section 1 of the same Decree. They could only have been re-inflated and made valuable again if the minister of Finance had exercised the power vested in the Minister under subsection (1) of section 5 of the Expropriated Properties Act, 1982, by issuing a certificate repossession to LVBC.

If such a certificate, had been issued it, would have acted under paragraph (a) of section 6 of Act 9 of 1982, as a transfer of the interest in the suit properties, from the Government back to LVBC. Since that did not happen, the titles to the suit properties remained with the Government. They continue to vest in Government until the Government transfers them to Crown Bottlers Ltd, the new equitable proprietor to whom the Government in an agreement of sale dated 12th February, 1993, sold “100th per cent of the shares of LVBC” (see paragraphic of the presumable to Annexure A to plaint).

I need not mention that in view of what I have stated above, it appears to me that the invocation of the provisions of section 56 of the Registration of Titles Act, by Mr. Mulira to support his submission that the suit properties are attachable is equally not well founded. So

is his reference to the Australian Torrens system as a guide in this case. It appears to me that Section 56 cannot be properly applied to this case. The court cannot merely look at the name which appears upon the certificate of title and quickly conclude that the owner of the name on the certificate is the proprietor holding title when specific provisions of the law clearly point in a different direction as I have already stated above.

Thus the first reason why the suit properties cannot be attached in execution of the decree issued against LVBC in Civil Suit No. 608 of 1997 is that the title to the suit property does not vest in LVBC but in the Government of Uganda. That fact cannot, in my humble view, be affected in any way by the claim made by the Plaintiff that the contract of sale of LVBC to the defendant was not a legally valid contract. I state so without prejudice to the very trite law that a person who is not a party or privy to a contract would normally have no locus standi to challenge its validity.

The second reason why I find that the suit properties are not attachable or why they would not be attachable even if this court were to find that the titles to them were vested in LVBC, relates to the question of LVBC's liability in Civil Suit No. 608 of 1997, from which the decree in execution of which attachment of the suit properties arose.

The plaintiff's evidence is that he was appointed as company lawyer and secretary by a board of directors constituted by the late Paulo Kibuka musoke and Norman Searle, sitting in Nairobi, on 12Th December 1992. The plaintiff's case is that the two were directors of LVBC as of that date.

The defendant has produced DW3, Mr. John Cose Ojok, a Senior State Attorney, attached to the office of the Registrar General. He has produced the returns of LVBC for the year 1992. The returns clearly show that LVBC had for the year 1992 a total of ten directors.

They were:

Fred Kamihanda

- John Matanda

- David Mulira

- George Egadn

- Micheal Kahwa
- Dr. Flowrence Mirembe
- Richard Banya Ocana
- Dr. Y.B.Ssemambo
- Obola Kalmongi
- V. Ntege.

Both the late Paul Kibuka musoke and Norman Searle were not directors of LVBC in 1992. Both names did not appear on the list of directors of LVBC contained in the return filed with Registrar General for that year. Thus whatever resolution they may have passed at the meeting they held on 12th December, 1992, in Nairobi was not a resolution of LVBC nor were the instructions issued on behalf of LVBC. They did not bind that company. Both the late Paul Kibuka musoke and Norman Searl were both former shareholders as well as former directors of LVBC. Their shareholding and directorship in that company ceased upon the coming into force of the Properties And Businesses (Acquisition) Decree 1975 which was retrospectively to 18th December, 1972.

Mr. Mulira has argued that the court must recognise the existence of two Boards of directors otherwise how could the process of repossession be possibly commenced and effected. In my humble view, the Expropriated Properties Act, 1982, easily answers that question. It speaks of “a former owner” and not former directors. Indeed in the case of LVBC the absence of legally recognisable “former directors” was expressly appreciated when, for the purposes of negotiating compensation with Government, the former shareholders appointed trustees. They could not rely upon the former board of directors which was not recognisable in law. Former directors of LVBC had no powers to make resolutions binding LVBC after the company had been acquired by the Government of Uganda.

I am fully aware that when a decree against LVBC was issued by this court in Civil Suit No. 608 of 1997, the question of the liability of LVBC to meet the claim for professional fees of the plaintiff was duly sealed. I am also aware that this is not an appeal proceedings in respect of Civil Suit No. 606 of 1997. They are not revisional proceedings either in respect of that

case.

However, I agree with Mr. Tumusinguze that liability is a question of law. I also agree with him that the defendant to this case was not a party to Civil Suit No. 608 of 1997. He could possibly not have presented the evidence of John Cox Ojok which he has presented before me. That evidence was never presented before the court in Civil Suit No. 608 of 1997. This court, therefore, can not be prevented from acting upon that evidence merely on account of the decision in Civil Suit No. 608 of 1997, which, in any case, is of no binding effect.

Furthermore, I agree with Mr. Tumusinguze when he relies upon the decision of the Court of Appeal of Uganda in Makula International Vs. Cardinal Nsubuga And Another 91982) HCB 11, and submits that this court cannot condone an illegality once it has been brought to its attention. I have stated that the question of liability of LVBC in this matter is a question of law. Imposing liability upon a person on whom it does not lie would amount to an illegality. Accordingly this court would be under obligation not to condone it.

For that reason, even if the titles to the Suit Properties were vested in LVBC, since LVBC would have no liability to meet the Plaintiff's claim for professional fees, the suit properties would, for that reason not be attachable.

Since the analysis with regard to this central issue disposes of the entire case, I shall not proceed beyond this point to analyse evidence in relation to the rest of the agreed issues.

Suffice it for me to state that in view of the conclusion I have made, in relation to analysis set out above, the plaintiff is not entitled to any of the remedies sought by him in the plaint.

The case is, therefore, dismissed with costs to the defendant.

V.F.MUSOKE-KIBUUKA (JUDGE)

28.2.2003.

Court: Order.

The Deputy Registrar (Civil) is requested to deliver this judgment on my behalf on
Wednesday, 12 March, 2003 at 9.00 am.

V. F.MUSOKE-KIBUUKA (JUDGE)