

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI**  
**MISCELLANEOUS APPLICATION NO. 120 OF 2024**  
**(ARISING FROM EXECUTION APPLICATION NO. 043 OF 2022)**  
**(ARISING FROM TAXATION APPLICATION NO. 028 OF 2022)**  
**(ALL ARISING FROM CIVIL SUIT NO. 005 OF 2021)**

**ELAYU SIMON ::: APPLICANT**

**VERSUS**

- 1. EMAKU JOSEPH**
- 2. OPEJO STEPHEN**
- 3. EGUNYU TONNY**
- 4. ABILO GABRIEL**
- 5. ADONG CELINA**
- 6. ATAMO AGNES ::: RESPONDENTS**

**BEFORE: HON. JUSTICE BONIFACE WAMALA**

**RULING**

**Introduction**

[1] This application was brought by Chamber Summons under Section 98 of the Civil Procedure Act and Order 22 rules 84 and 89 of the Civil Procedure Rules seeking orders that;

- a) The respondents vacate land comprised in Leasehold Register Volume 1347, Folio 6 Plot 18 situate at Gweri Road, Central Ward, Soroti Municipality in Soroti City East Division.
- b) The costs of this application be provided for.

[2] The grounds of the application are contained in the Chamber Summons and in the affidavit in support of the application deposed by **Elayu Simon**, the applicant. Briefly, the grounds are that the applicant purchased land comprised in Leasehold Register Volume 1347 Folio 6 Plot 18 situate at Gweri

Road, Central Ward, Soroti City East Division in execution of a decree from M/s Soroti Associates Court Bailiffs and General Auctioneers and Emulu Ojamuge Charles (the judgment debtor). Earlier on, there was a judgment in favor of Emulu Ojamuge Charles in which the court adjudged the 1<sup>st</sup> and 2<sup>nd</sup> respondents as trespassers. Later on, Okiror Dan sued Emulu Ojamuge Charles in another case whereby judgment was given in favor of Okiror Dan. A warrant of attachment and sale was issued in favor of Okiror Dan in execution of the said judgment. The bailiffs ascertained that the property was owned by Emulu Ojamuge Charles and were cleared by the Uganda Police to carry out execution in the matter. The suit property was advertised in the New Vision newspaper on 22<sup>nd</sup> February 2023. The judgment debtor later consented to have the property sold in execution of the decree and the same was sold to the applicant. The applicant is now the registered proprietor of the suit property yet the respondents have refused to vacate the same despite several notices. He concluded that it is just and equitable that the respondents are evicted from the said property.

[3] The application was opposed through an affidavit in reply deposed by **Emaku Joseph**, the 1<sup>st</sup> respondent on behalf the 2<sup>nd</sup> – 6<sup>th</sup> respondents. The deponent stated that the purchase of the suit land is pending determination of the Court of Appeal in Civil Appeal No. 409 of 2022. He stated that the warrant of attachment did not specify that the land comprised in LRV 1347 Folio 6 Plot 18 Gweri Road was the one to be attached. He further stated that the sale of the suit land was illegal since the land is still under execution in Execution Case No. 04 of 2022 between Emulu Ojamuge Charles and Emaku Joseph and not to Okiror Dan. He also stated that the consent by Emulu Charles to have the property sold was illegal since the same property is still under hearing in Civil Appeal No. 407 of 2022. He averred that the property was not under execution in Execution Application No. 43 of 2022. The consent to sell the suit property to Elayu Simon is still under investigation before this court and the

court of appeal and is an abuse of court process. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have never been served with notices of eviction from the suit land/property. He finally averred that the applicant was not a party to Civil Suit No. 28 of 2018 concerning the property in which the respondents are staying. It is just and equitable that the application be dismissed with costs.

[4] The applicant filed an affidavit in rejoinder whose contents I have also taken into consideration.

### **Representation and Hearing**

[5] At the hearing, the applicant was represented by **Ms. Mwesigwa Jemima** from M/s Omongole & Co. Advocates while the respondents were represented by **Mr. Tonny Okwalinga** from M/s Kob Advocates & Solicitors. The hearing proceeded by way of written submissions which were duly filed and have been considered in the determination of this application.

### **Issue for determination by the Court**

[6] One issue is up for determination by the Court, namely; *Whether a warrant of vacant possession should be issued against the respondents?*

### **Submissions by Counsel for the Applicant**

[7] Counsel for the applicant relied on the provision under Order 22 rule 84 of the CPR to the effect that where a decree holder for possession of immovable property or the purchase of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he or she shall make an application to court complaining of the resistance or obstruction. Counsel submitted that in *Visare Uganda Limited v Festus Kateregga & 3 Others*, HCMA No. 591 of 2023, the court held that where immovable property is sold in execution of a decree, the sale becomes absolute on payment of the full purchase price to the court, or to the officer appointed

by the court to conduct the sale and that it is crucial to ensure that the reliability and efficacy of sales in execution is upheld. Counsel submitted that the applicant paid the full purchase price to Emadu Thomas who was appointed by court to execute the sale and that since the respondents have not taken appropriate proceedings to set aside the sale, the applicant is at liberty to evict the respondents from the land.

[8] Counsel disputed the averments in the affidavit in reply to the effect that the warrant of attachment did not specify the suit land as the one to be attached and sold; that it was not under execution and that it is still under execution in Execution Application No. 4 of 2022. Counsel stated that the warrant of attachment and sale clearly specified the land to be attached as a plot of land with developments titled LRV HQT 1347 Folio 6 Plot 18 Gweri Road, Central Ward located in Soroti City East. Counsel concluded that the applicant has attached the relevant court judgments of this court, the warrant of attachment and the certificate of title and accordingly seeks to evict the respondents from the premises and obtain vacant possession of the same.

### **Submissions by Counsel for the Respondent**

[9] In reply, Counsel for the respondents submitted that the application has no merit since the sale relied on by the applicant was illegal. Counsel relied on the case of *Julius Okwi v Moses Kirunda Civil Appeal No. 35 of 2008* for the submission that an illegality vitiates the transfer of title with the result that the sold property remains property of the owner. Counsel submitted that under section 48(1) of the CPA and Order 22 rule 51(1) of the CPR, the court may order, but shall not proceed further with, the sale of any immovable property under a decree of execution until there has been lodged with court the duplicate certificate of title to the property or special certificate of the title thereof. Counsel submitted that the evidence by the applicant does not show that the applicant filed or deposited the certificate of title in the court before

the sale was conducted. Counsel also stated that the respondents were never served with notices of eviction which renders the sale illegal.

### **Determination by the Court**

[10] The position of the law is that a judicial sale, unlike a private sale, is not complete immediately it takes place but until the person challenging it has taken appropriate proceedings. Failure to take such proceedings or where the challenge is unsuccessful, the sale will then be complete and made absolute. See: *Lawrence Muwanga v Stephen Kyeyune (Civil Appeal No. 02 of 2001) 2002 UGSC 5 (19 June 2002)*. In *Visare Uganda Limited v Festus Kateregga & 3 Others, (Misc. Application No. 591 of 2023) [2023] UGCommC 213 (22 November 2023)*, the court relying on section 49 of the CPA held that where immovable property is sold in execution of a decree, the sale becomes absolute on payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale. It is crucial to ensure that the reliability and efficacy of sales in execution is upheld.

[11] On the case before me, it is clear on evidence that the suit property was sold pursuant to a court order. It is contended by the respondents that the sale of the suit property was illegal for reasons that the duplicate certificate of title was not lodged in court; that suit property was not subject to execution and that they were not served with eviction notices. A perusal of the record shows that a warrant of attachment and sale of immovable property was issued in respect of a plot of land with developments titled as LRVHQT 1347 FOLIO 6, Plot 18 Gweri Road, Central Ward, Soroti City East. It was advertised in the New vision newspaper on 22<sup>nd</sup> February 2023, which was a public notice, and sold to the applicant on 24<sup>th</sup> March 2023. It was accordingly transferred into the names of the applicant on 12<sup>th</sup> June 2023. The respondents did not take any step to challenge the sale of the suit property which rendered the attachment and sale complete and absolute. The respondents were therefore

required to hand over vacant possession to the applicant pursuant to the said judicial sale.

[12] It was claimed by the respondents that the suit property was subject of a pending appeal in the Court of Appeal. The record indicates that the appeal before the Court of Appeal was in respect to the judgment and decree in Civil Suit No. 28 of 2018 between Emulu Ojamuge Charles and Emaku Joseph & 3 Others. There is no evidence of an order for stay of execution of that decree. It is settled law that lodgment of an appeal does not operate as a stay of execution. As such, since the property was in the name of Emulu Ojamuge Charles, its attachment for sale in execution of another court decree could not be affected by a pending appeal in a completely different decree. As it stands therefore, the attachment and sale of the property leading to the purchase by the present applicant was never challenged. The sale thereof therefore became complete and absolute.

[13] The further argument by Counsel for the respondents was that the sale was illegal on account of failure to follow the procedures of attachment or non-issuance of notices of eviction to the respondents. These arguments would perhaps have been relevant if the proceeding before the court was one challenging the judicial sale before it was complete and absolute. This, however, is not such a proceeding. At this level, the sale is not available for impeachment on procedural aspects. As stated by the court in *Visare Uganda Limited (supra)*, the position of the law on absoluteness of a judicial sale is crucial to ensure that the reliability and efficacy of sales in execution is upheld.

[14] In all, therefore, the applicant has satisfied the Court on a balance of probabilities that the sale of the property herein in issue was complete and absolute. The applicant is entitled to an order of vacant possession of the same. The application is therefore allowed with orders that;

- a) The respondents shall vacate the land comprised in LRV 1347, Folio 6, Plot 18 situate at Gweri Road, Central Ward, Soroti Municipality in Soroti City East Division within sixty (60) days from the date of this order.
- b) In default, a warrant of vacant possession shall issue against the respondents for their forceful eviction.
- c) The costs of this application and of any execution shall be borne by the respondents.

It is so ordered.

***Dated, signed and delivered by email this 25<sup>th</sup> day of July, 2025.***



**Boniface Wamala**  
**JUDGE**